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**Norms and non-governmental advocacy on conventional arms  
control: dynamics and governance**

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## **Abstract**

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Key words: Norm emergence and diffusion; non-governmental advocacy actors; conventional arms; small arms; arms transfer controls; arms brokering controls; tracing of small arms; security governance

Clear changes occurred in the field of conventional arms control in the last two decades. States adopted a multitude of norms on especially small arms control in various multilateral control instruments. In addition, non-governmental advocacy actors often established themselves as active participants in control debates with governments. The changes are surprising because they took place in the security sphere and therewith in an area traditionally understood to be the exclusive domain of governments. This research project investigates the significance of the changes for the traditional understanding of security governance. Specifically, it investigates the emergence of control norms and the role and policy impact of non-governmental actors in the promotion of the norms. It asks whether the normative changes and significance of non-governmental actors therein challenge the understanding of security governance that underpins many established approaches to international relations theory.

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ATT	Arms Trade Treaty
BBC	British Broadcasting Corporation
COARM	EU Council working group on conventional arms control
ECOWAS	Economic Community of West African States
EC	European Community
EP	European Parliament
EU	European Union
GB	Great Britain
GRIP	Groupe de Recherche et d'Information sur la Paix et la Sécurité
IANSA	International Action Network on Small Arms
ICBL	International Campaign to Ban Landmines
OAS	Organisation of American States
OAU	Organisation of African Unity
OSCE	Organisation for Security and Cooperation in Europe
SALW	Small Arms and Light Weapons
SADC	Southern African Development Community
SIPRI	Stockholm International Peace Research Institute
UNGA	UN General Assembly
UNIDIR	United Nations Institute for Disarmament Research
UNITA	Uniao Nacional Para a Independencia Total de Angola
WA	Wassenaar Arrangement
WFSP	World Forum on the Future of Sport Shooting Activities

## Abbreviations of major multilateral instruments on arms control

- Bamako Declaration on SALW:** *Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons*. Bamako: Organisation of African Unity, 1 December 2000.
- EC Declaration on Non-Proliferation:** *Declaration on Non-Proliferation and Arms Exports* (annex VII to the conclusions adopted by the Luxemburg Council, 28-29 June). Luxemburg: Council of the EU, 29 June 1991.
- ECOWAS Convention on SALW:** *ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*. Abuja: ECOWAS, 14 June 2006.
- EU Code of Conduct:** *EU Code of Conduct on Arms Exports* (EU Council document no. 8675/2/98). Brussels: Council of the EU, 5 June 1998.
- International Tracing Instrument:** *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* (contained in UN document no. A/60/88). New York: UNGA, 8 December 2005.
- Nairobi Best Practices on SALW:** *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons*. Nairobi, 21 June 2005.
- Nairobi Protocol on SALW:** *Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*. Nairobi, 21 April 2004.
- OAS Convention on Transparency:** *Inter-American Convention on Transparency in Conventional Weapons Acquisitions* (OAS document no. AG/Res. 1607 (Xxix-O/99)). Washington, D.C.: Organisation of American States, 7 June 1999.
- OAS Firearms Convention:** *Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* (OAS document no. AG/RES.1, XXIV-E/97). Washington D.C.: OAS, 14 November 1997.
- OAS Model Regulations:** *Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition* (OAS document no. 1271/03). Montreal: OAS, 20 November 2003.
- OSCE Best Practices:** *OSCE Handbook of Best Practices on Small Arms and Light Weapons* (OSCE decision no. 5/03). Vienna: Organisation for Security and Cooperation in Europe, 31 December, 2003.
- OSCE Document on SALW:** *OSCE Document on Small Arms and Light Weapons* (OSCE document no. FSC.DOC/1/00). Vienna: OSCE, 24 November 2000.
- OSCE Principles on Arms Transfers:** *Principles Governing Conventional Arms Transfers*. Vienna: OSCE, 25 November 1993.
- SADC Firearms Protocol:** *Protocol on Control of Firearms, Ammunition and other related materials in the Southern African Development Community Region*. Gaborone, Botswana: Southern African Development Community, 14 August 2001.
- UN Firearms Protocol:** *UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* (UN document no. A/Res/55/2558). New York: UNGA, 8 June 2001.
- UNGA Guidelines for Arms Transfers:** 'Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991', in *Report of the Disarmament Commission* (UN document no. A/51/42). New York: UN, 22 May 1996.
- UN Programme of Action on SALW:** *UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (UN document no. A/Conf.192/15). New York: UN, 21 July 2001.
- UNSC Guidelines for Arms Transfers:** *Guidelines for Conventional Arms Transfers*. London: permanent members of the UN Security Council, 18 October 1991.
- WA Initial Elements:** *Guidelines & Procedures, including the Initial Elements* (as amended in 2007). Vienna: Wassenaar Arrangement, December 2007.
- WA Elements on Brokering:** *Elements for Effective Legislation on Arms Brokerage*. Wassenaar: Wassenaar Arrangement, 12 December 2003.
- WA Best Practices for SALW Exports:** *Best Practice Guide for Exports of SALW*. Vienna: Wassenaar Arrangement, 12 December 2002.

## **Foreword**

Numerous non-governmental actors around the world are lobbying governments to strengthen global, regional, and national controls on conventional arms. A particular focus is the proliferation of illicit small arms such as pistols and rifles and their use in armed conflict and crime. The activities of non-governmental advocacy actors include the publication of research reports to inform policy debates, the conduct of ‘global weeks of action’ to raise awareness about arms control challenges, and other efforts to mobilise political support for their aims. This research is inspired by the question of whether the activities of these actors matter and make a difference.

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## **Chapter 1: Introduction**

Clear changes occurred in the field of conventional arms control in the last two decades. Up to the late 1980s, states coordinated their national controls on conventional arms in the framework of their respective political and military alliances. There also existed or emerged cooperative frameworks that sought to transcend the East-West conflict. An example is the Conference for Security and Cooperation in Europe in the context of which states negotiated the 1990 Treaty on Conventional Armed Forces in Europe. The treaty sets comprehensive national limits on conventional arms in Europe and mandates the destruction of arms in excess of these limits. Multilateral arms control agreements existed even before that, especially in the area of nuclear, biological, and chemical weapons. Examples from the post-Second World War era are the 1967 Outer Space Treaty that bans the stationing of nuclear weapons in outer space, the 1968 Nuclear Non-Proliferation Treaty, and the Anti-Ballistic Missiles Treaty and the Biological Weapons Convention, both adopted in 1972. Common to these treaties is their focus on confidence building between participating states and the reduction of the threat of military confrontation between them.

But there remained major limits to the willingness of states to cooperate more extensively in the field of conventional arms control. States did not adopt multilateral agreements with the aim to prevent destabilising accumulations and diversions of conventional arms into the illicit sphere until the early 1990s. Multilateral agreements on conventional arms control did not seek to limit and prevent possible negative impacts of arms transfers and diversions on peace and security in the developing world. Multilateral agreements did not address the possible contribution of arms transfers and diversions to armed crime as well as armed violence by rebel groups and insurgents. There existed no expressed multilateral concern about the ability of state and non-state



actors to commit gross violations of human rights and international humanitarian law with the transferred or diverted arms. Related, states did not exchange information on their arms transfers and control policies to allow for the identification of good and best practices in national arms controls that, in turn, may have assisted in the further development of multilateral standards on conventional arms control. In other words, states retained a large degree of autonomy in their national controls on conventional arms until the late 1980s.

The primacy of the state in conventional arms control was also evident at national levels. The national policy on arms control was generally the exclusive domain of the executive. Governments- the Swedish government was one of only few exceptions- did not publish information on their control systems or regularly inform parliaments and the public on the national arms control policy and its implementation. In parallel, there was often little sustained and detailed interest by parliaments and other non-governmental actors in the national arms control policy. Peace activists and development groups already argued in the 1970s that arms exports to the developing world took place at the expense of the capacity of recipient states to invest their resources into, for example, their national healthcare and education systems. There could also emerge public criticism of specific transfers in the context of ‘arms export scandals’. Nevertheless, governments and non-governmental actors did not regularly engage into detailed debates about the national control system and how to improve it. Related, non-governmental actors were rarely seen as credible partners in such debates who could make substantive contributions to the development and implementation of the national control system.

Two decades later, a very different situation presents itself. States adopted numerous multilateral instruments on the control of especially small arms and light

weapons (hereafter small arms), a sub-category of conventional arms. The principal instruments were adopted at the global level, in the Americas, Eastern, Southern, and Western Africa, as well as in the context of the trans-regional Organisation for Security and Cooperation in Europe. States in the European Union also adopted common standards to coordinate their policies and controls on exports of conventional arms. The instruments are underpinned with regular information exchanges between states on the implementation of the norms that they adopted in the instruments. As shown in this research, control standards and practices also changed at various national levels in European states, and most governments began reporting publicly on the national control policy and its implementation. The multilateral and national developments in conventional and small arms controls are exemplified in the emergence and development of control norms that states adopted in the instruments and their national practices.

A further change took place with emergence of public NGO advocacy networks on conventional and small arms control at global, regional, and national levels. NGOs in the networks come from a broad spectrum that includes faith-based groups, arms control and disarmament, human rights, international humanitarian law, development, and domestic gun control. The networks consistently lobby governments and mobilise public support for strengthened arms control standards. NGO advocates were also active and visible participants in the processes leading to the negotiations of the instruments and national changes on arms control. They entered into policy coalitions with states and government departments that share their policy aims and seek to contribute to coalitions of willing states. In addition, they provide detailed research reports and policy briefing to raise awareness about control challenges and possible solutions. Parliamentarians and NGO networks in at least some European states are also

engaged in a regular dialogue with their governments on arms export controls and regularly scrutinise their governments' implementation of national export policies.

The developments in conventional arms control are surprising from what has been called the 'traditional views of security' in international relations theory. These traditional views (a terminology borrowed from e.g. Terriff *et al.*, 1999) pertain to classical realism, neo-realism, and neo-liberal institutionalism which, despite significant differences between them, share certain assumptions about the security sphere and the resultant behaviour of states. The assumptions include that states operate in an anarchical international system in which war is an ever-present possibility. States have to ultimately ensure their own survival, if necessary by military means. This is understood to imply severe constraints on their willingness to cooperate if it limits their ability to pursue the aim of survival. Conventional arms are an important military means available to states. States are therefore understood to seek to retain their national flexibility and exclusivity in the implementation of national policies on conventional arms control. Neo-liberal institutionalism emphasises the scope for cooperation in international relations. Nevertheless, it concurs with classical and neo-realism that such cooperation will be more difficult to achieve in the security sphere than in for example the economic relations between states.

The situation that existed up to the late 1980s broadly reflected these positions and what may be termed the traditional governance of conventional arms control: there existed some limited cooperation on conventional arms control, especially inasmuch as it related to confidence building measures and the reduction of the threat of war between states that participated in the relevant forums. But cooperation did not extend to the acceptance of constraints on national flexibility and exclusivity in pursuit of aims

such as reducing the threat of armed crime or of armed violence and violations of humanitarian law in the developing world. For example, the states of the North Atlantic Treaty Organisation and the Warsaw Pact were committed to not export arms to clients that supported the opposing military alliance. Exporting states were not constrained, however, in exporting to clients in the developing world. They also did not exchange information with each other on their national control systems and policies as well as their implementation thereof. Likewise, the governments of exporting states in Europe and elsewhere generally limited their transparency and cooperation with parliaments and non-governmental actors at the national level and retained exclusive control over the implementation of the national export policy (see chapter six).

The emergence of a multitude of multilateral control norms and the active participation of non-governmental actors in control debates do not fit easily with the picture of the traditional governance of conventional arms control. The adoption of common minimum standards in areas that were not previously regulated has the potential to constrain national flexibility and autonomy. Constraints on this flexibility in pursuit of aims to reduce threats of violence in other parts of the world are particularly noteworthy in this regard. Further, the adoption of control norms at national levels, greater transparency by governments, and regular dialogue with non-governmental actors may challenge the exclusivity of governments in their arms controls. This is especially the case if non-governmental actors regularly scrutinise their governments' implementation of national control policies. The question arises therefore whether the changes signal an end to the traditional understanding of the governance of conventional arms control. Are we witnessing a shift in the governance of conventional arms control away from the primacy of the state towards a greater regulation through

norms and non-governmental actors? Are we witnessing a shift towards the greater governance of conventional arms control and, by implication, international peace?

### **1.1 The phenomena under investigation**

This research follows two principal lines of investigation. The first is the emergence and development of conventional arms control and small arms control norms. Social constructivists understand norms as “collective expectations for the proper behaviour of actors” and as specifying “standards of proper behaviour” (Katzenstein, 1996, p. 5). They argue that state behaviour and policy choices cannot be adequately explained with reference to material structures of state power alone (Finnemore and Sikkink, 1998; Katzenstein, 1996; and Wendt, 1999). Rather, they understand the international system as a social environment that shapes and is shaped by the actions and interests of state and non-state actors. They argue that “(t)he social nature of international politics creates normative understandings among actors that, in turn, coordinate values, expectations, and behavior” (Finnemore, 1996, p. 157). Principled ideas and norms matter because what is held as a value has an influence on the way actors construct the social world (Jepperson *et al.*, 1996; Frost, 1998; and Wendt, 1992). Norms also shape states' interests and preferences in the sense that the normative environment has an influence on how states define their national interests (Finnemore, 1996; Kowert and Legro, 1996).

Constructivists do not argue that the presence of norms dictates compliance or guarantees or determines action (Jepperson *et al.*, 1996, p. 56). Rather, norms can both constrain and enable behaviour by making possible some types of actions while excluding others as inappropriate even if they remain possible (Frost, 1998). Finnemore argues that “the connection assumed [...] between norms and action is one in which

norms create permissive conditions for action but do not determine action” (Finnemore, 1996, p. 158).<sup>1</sup> If states adopt new interests as a result of new or changed norms, this “does not guarantee pursuit of these interests over all others on all occasions. New or changed norms enable new and different behaviors, they do not ensure such behaviors” (*ibidem*). Constructivists also highlight potential changes in norms and normative structures. “Any new or emergent norm must compete with existing, perhaps countervailing, ones. This is a political process that implicates the relative power of international or domestic coalitions” (Jepperson *et al.*, 1996, p. 56). It is instructive therefore to also look at the actors and coalitions that shape norms to fully understand processes of norm development.

This research is concerned with norms that commit states to standards of adequate behaviour in relation to conventional arms and especially small arms control. Specifically, my research is concerned with the norms that states established in the last two decades. At global level, states committed to provide greater transparency on their conventional arms transfer in the early 1990s. States in the European Union adopted common minimum standards on their exports of conventional arms in the early 1990s and continuously developed them further. Since particularly the early 2000s, states also adopted norms specific to the control of small arms. Relevant norms and instruments were adopted at the UN in 2001 and 2005. States in the Americas and in the

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<sup>1</sup> Constructivists see human agency and normative structures as interdependent. The argument of mutual interdependence of agency and structure is well established in social sciences and is used, for example, in the school of scientific realism that was developed by Roy Bhaskar. Bhaskar argues that “people do not create society. For [society] always pre-exists them and is a necessary condition for their activity. Rather, society must be regarded as an ensemble of structures, practices and conventions which individuals reproduce or transform, but which would not exist unless they did so. Society does not exist independently of human activity ... But it is not the product of [human activity]” either (Bhaskar, 1998, p. 36). Bhaskar continues to argue that “(w)e do not create society ... But these structures which pre-exist us are only reproduced or transformed in our everyday activities; thus society does not exist independently of human agency ... The social world is reproduced or transformed in daily life” (*ibidem*, p. 4). With regards to norms in international politics, one can thus argue that the normative environment of politics pre-exists contemporary human agency, but that this environment is nevertheless shaped and reproduced by current human activity.

Organisation for Security and Cooperation in Europe (OSCE) adopted small arms instruments even before this (1997 and 2000 respectively). States in the Great Lakes Region and Horn of Africa as well as in Southern Africa adopted sub-regional small arms instruments in 2000 and 2001. States in Western Africa adopted common small arms controls in 2006 (see chapter three). In addition, states complemented the norms established in multilateral instruments with best practice guidelines in most of the forums mentioned in this paragraph.

There is often a significant overlap between these various multilateral norms in the sense that they address the same challenges and stipulate similar measures that states should take to address these challenges. At the same time, there exists a considerable variance in the geographical spread of the relevant instruments. Further, control norms that are found in some of the instruments are not found in comparable instruments in other multilateral forums. Importantly, there sometimes exist profound differences even between the multilateral norms that address the same control challenge. As shown in this research, these differences can also exist between norms that states adopted at national levels in Europe. To illustrate, two multilateral instruments in different settings may both stipulate norms that states should combat the illicit trade in small arms. But there can be differences in the way these norms are framed and, therewith, in the range of measures that states should take to achieve this aim. Further differences may exist in the comprehensiveness and detail of measures that are stipulated to address a specific control challenge. In addition, states may only be encouraged to take certain measures or be politically or legally committed to take these measures.

The primary question on norms of this research is whether the adoption of the norms by states in the last two decades signals a significantly greater willingness of states to

cooperate in the security sphere. Does their adoption challenge traditional understandings of security governance and state behaviour in the security sphere? A further research focus is to identify possible explanations for the variance between the relevant norms. Answering this question will allow to further investigate the adequacy of traditional views on security governance and their predictions about norm emergence in the security sphere.

#### *1.1.a Advocacy networks on conventional arms and small arms control*

The second principal line of investigation in this research is the role and impact of non-governmental advocacy networks in support of greater controls on conventional arms control. As mentioned, small arms are a sub-category of conventional arms and the advocacy by non-governmental actors on conventional arms control is understood in this research to include advocacy on small arms control. The term ‘network’ is used here as a generic reference to the formal and informal rules and interpersonal relationships between policy actors who are involved in the process of policy formulation within a specific issue-area. Non-governmental advocacy networks are understood as policy actors who seek to “introduce new ideas, provide information, and lobby for policy changes” (Keck and Sikkink, 1998, p. 9). Closely involved in the political debates in their respective issue-areas, they lend their weight and expertise to governmental actors who are sympathetic to their policy proposals. They further assist their governmental partners by providing information and by helping to conceptualise and prioritise issues on the political agendas. Indeed, there have also been instances in which such networks are argued to have played a leadership role in processes that led to the adoption of new norms, including in the security sphere. An example is the non-governmental advocacy on anti-personnel landmines in the mid 1990s (see below).



Advocacy networks typically crystallise around principled ideas, that is, they form around “normative ideas that specify criteria for distinguishing right from wrong and just from unjust” (Goldstein and Keohane, 1993, p. 9). Such networks frequently “form from clusters of activists and movement organizations, policymakers, intergovernmental officials, media, and foundations pursuing a common, principled goal” (Smith *et al.*, 1997, p. 65). Policy coalitions between such actors are based on shared sets of principled and causal beliefs, as well as a common policy enterprise (Haas, 1992a, p. 3). They seek to influence governmental policy choices through the “strategic use of norms, ideas and information”; “providing ideas and information to [political] allies”; “coordinating policy initiatives”, and “appealing to international norms that resonate in the domestic context” (Evangelista, 1999, p. 381-2 and 389). Keck and Sikkink are among the leading analysts of such networks. In their words, advocacy networks bring together actors

“who are bound together by shared values, a common discourse, and dense exchanges of information and services. ... At the core of the relationship is information exchange. What is novel in these networks is the ability of nontraditional international actors to mobilize information strategically to help create new issues and categories and to persuade, pressure, and gain leverage over much more powerful organizations and governments. Activists in networks try not only to influence policy outcomes, but to transform the terms and nature of the debate” (Keck and Sikkink, 1998, p. 2).

Non-governmental advocacy on arms control is not a new phenomenon. Non-governmental actors lobbied governments to agree to a complete prohibition on ammunition that expands in the human body (dum dum ammunition) already at the ‘Hague Peace Conference’ in 1899 (Hubert, 2000, p. 1-3). Other examples of non-governmental advocacy are the annual Pugwash Conferences. The conferences are held

since 1957 to provide scholars and public figures from around the world with a non-political platform to discuss the threats posed by nuclear, chemical, and biological weapons (Pugwash Online, undated). Networks of scientists and policy specialists also formed to influence governmental choices in the discussions on, for example, the development of the Nuclear Test Ban Treaty and the Anti-Ballistic Missile Treaty in the early 1960s and 70s respectively (Risse-Kappen, 1995b; and Adler 1992).

Knowledge-based networks on technically complex issues such as nuclear arms control are known as epistemic communities. They are defined as networks “of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain” (Haas, 1992a, p. 3). Their membership tends to be composed of technical experts “to whom governments turn for knowledge in times of uncertainty” (Price, 1998, p. 620). The membership of advocacy networks may be understood as broader than that of epistemic communities. That is, advocacy networks may include members who do not necessarily have a detailed technical knowledge of specific control challenges but who have sufficient knowledge to engage in credible public advocacy and mobilisation of political support for certain aims. To elaborate, an advocacy network may include one or more epistemic communities on certain control challenges who then inform the other network members of the technically correct responses to challenges that the other network members can then focus their advocacy on.

The non-governmental networks that are the focus of this research project emerged at different levels and different times since the early 1990s. As shown in this research, one of the first networks in this regard emerged in the UK in the early 1990s and was principally composed of technical experts. By the mid 1990s, there existed national advocacy networks on conventional arms control in several further European states as

well as a transnational advocacy network on conventional arms control in Europe. Their advocacy was largely inspired and informed by the epistemic community of policy experts from the UK (see chapter six). Many of the members of these networks also joined the global advocacy network that emerged on small arms control in the late 1990s (see below). Preceding the emergence of the global network on small arms control was the emergence of a global network on anti-personnel landmines. This research project excludes an analysis of this network and the development of norms on anti-personnel landmines for reasons of space as well as already existing research on these issues (see below). Nevertheless, the global advocacy network on anti-personnel landmines is briefly presented in the following paragraphs to better put the global network on small arms control into context.

#### *1.1.a.1 The International Campaign to Ban Landmines*

In the early and mid 1990s, there emerged growing international awareness about the disastrous humanitarian consequences of anti-personnel landmines. More than one hundred million such mines were estimated scattered in some 60 countries around the world. Remaining active for decades, anti-personnel landmines kill and maim indiscriminately, and they are triggered by anything from a child's footstep to a passing cow. Landmines were estimated to claim the lives of or severely injure some 2,000 civilians around the world each month at the time. In addition, the presence of landmines greatly increases pressures on arable lands after conflicts end. It was also suggested that the number of landmines being planted vastly outpaced demining efforts and that demining efforts in affected countries could take decades rather than years (Hubert, 2000, p. 19).

A key non-governmental actor advocating greater efforts on landmines was the International Campaign to Ban Landmines (ICBL). It was created by a small number of NGOs in 1992 and included Handicapped International and Mine Advisory Group, that is, NGOs that had first hand experience of the effects of landmines on human populations in affected countries (*ibidem*, p. 27-9). By the mid 1990s, the ICBL had grown to include some 1,200 member NGOs from around the world. They came from vocations such as demining, medical, developmental, religious, and disarmament areas (Williams and Goose, 1998, p. 22). The ICBL “mobilized grassroots activists, galvanized public opinion, [and intensively] lobbied governments” to support a comprehensive ban of the production, transfer, stockpiling, and use of all types of anti-personnel landmines (Hubert, 2000, p. 19).

Information politics were central to the work of the ICBL. In particular, the ICBL functioned as a resource centre that facilitated the collection and sharing of information among the network members. The ICBL also engaged in disseminating information to the media, publics, governments and international organisations in order to mobilise support for specific policies. By generating, collating and disseminating statistics and information, the network sought to influence the way the landmine issue was framed and understood by publics and governments (Price, 1998; Rutherford, 2000a and 2000b). The ICBL could claim considerable expertise in the relevant issues because of the direct experiences of core network members with regards to the humanitarian effects of landmines and the requirements for demining.

Significantly, the ICBL argued that the issue of anti-personnel landmines should not be addressed as a disarmament issue that would build confidence among states and limit the threat of war between them. Rather, it argued that the issue was one of humanitarian concern and that, while states were arguing about their national security

interests and the role of landmines for their security doctrines, thousands of innocent civilians were dying and maimed. In other words, the ICBL reconceptualised and reframed the landmine issue as a primarily humanitarian rather than as a purely disarmament and arms control issue.

The ICBL worked in close partnership with other actors who advocated greater efforts to combat the challenges posed by anti-personnel landmines. They included the International Committee of the Red Cross, UN agencies such as the UN Department of Humanitarian Affairs, and a core group of like-minded states. The core group of small and medium-sized states included Austria, Belgium, Canada, Denmark, Ireland, Mexico, Norway, the Philippines, South Africa, and Switzerland. They worked in close partnership with the ICBL to develop policy priorities and strategies for international action. A key question the different actors faced in the mid 1990s was whether there were realistic chances to push for a ban on landmines and, if so, whether this could be done within the framework of the United Nations.

One of the challenges pro-ban actors faced was the opposition by, amongst other states, the USA which argued in favour of a restriction rather than a ban of landmines. The USA also argued that the issue should be treated by the consensus-based annual UN Conference on Disarmament. This would have allowed the USA to veto a total ban. Canada surprised the international community in this context by proposing the development of a global treaty within one year and outside the UN at an international conference in Ottawa, Canada, in October 1996 (Hubert, 2000, p. 9). This call had been directly inspired and coordinated with the ICBL leadership. What followed were several months of international and regional negotiation meetings by governments and non-governmental campaigners around the world that became known as the Ottawa process.

Some 14 months later, states met again in Ottawa to adopt the 1997 *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*. The activities of the ICBL in support of the mine ban were recognised by the Peace Nobel Prize that was awarded to the ICBL's coordinator in 1997. By late 2006, more than 150 states were party to the convention.<sup>2</sup> The Ottawa process and the resultant convention demonstrated that coalitions of like-minded states and non-governmental campaigners could affect significant global policy change even if such change was opposed by influential states such as the USA. Further, as argued by the authors who are cited in the above paragraphs, the ICBL played a critical role in initiating and developing the momentum towards the ban on anti-personnel landmines. It also provided a leadership role in reconceptualising the landmine issue from a military and security issue to a humanitarian issue that required urgent action, if necessary outside established forums on arms control.

#### *1.1.a.2 The International Action Network on Small Arms*

The success of the ICBL served as an inspiration for the development of other global networks on security issues, and especially for the development of a global non-governmental advocacy network on small arms control. The agreement between NGOs to create the International Action Network on Small Arms (IANSA) as a global platform for joint advocacy efforts emerged in a series of NGO meetings in 1997 and 1998. One meeting, the *International NGO Consultation on Small Arms Action*, took place at Lake Couchiching, Canada from 17-19 August 1998.<sup>3</sup> The participants, representing 33 NGOs from 18 countries from the northern and southern hemispheres, discussed ways to “more effectively advance policies and actions to control the

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<sup>2</sup> The list of states party to the convention is available at <http://www.icbl.org/treaty/members>

<sup>3</sup> The report of the workshops is available at <http://www.ploughshares.ca/libraries/Control/Couchiching.html>

diffusion and misuse of small arms, and to respond to the devastating consequences of small arms for individuals, local communities, states, and the international community". The meeting concluded with an agreement to establish an international action network on small arms as a means to collectively work towards "preventing the proliferation and unlawful use" of small arms and light weapons (IANSA, 1998, p. 1). A further meeting with participants from "over 100 NGOs from all around the world" took place in Brussels, Belgium in October 1998. Participants discussed possible policy objectives, methods for advocacy work and campaigning, as well as the scope, nature, and organisational structure of IANSA (*ibidem*). The outcomes of the NGO meetings in Canada and Belgium were consolidated in the founding document of IANSA that provides a policy framework for joint NGO advocacy and identifies action points for network members.

By late 2006, IANSA had grown to a membership of some 700 NGOs that came from backgrounds ranging from humanitarian law, human rights, development, religious groups, arms control, and public health from about 100 countries (IANSA, 2006). One of IANSA's strengths is the expertise of many of its members of the effects of small arms spreads and misuse that they acquired by working in affected countries. IANSA also serves as a resource centre and opinion platform for its members and provided up-dates and electronic newsletters to the interested public. In addition, it lobbies governments and holds them accountable to their publicly stated commitments under national and international agreements (*ibidem*). IANSA is also one of the core members of the Control Arms campaign that was launched in 2003 to promote an international treaty on the control of conventional arms transfers. Some of IANSA's efforts to influence the development of global small arms norms are illustrated by its activities in the context of the development of a UN Programme of Action on illicit

small arms in 2001. The programme was developed in a series of preparatory meetings (PrepComs) in 2000-01 as well as a UN conference in 2001. As summarised by a participant in the process:

In tandem with the UN meetings, IANSA coordinated a series of parallel NGO briefings throughout the PrepComs and the conference itself. Daily caucus meetings brought together IANSA partners to discuss strategy for lobbying, while lunch-time briefings utilized the expertise of the NGOs who were present to educate others on specific themes. Wider NGO representation at the third PrepCom allowed for a more coordinated series of briefings, including testimony of victims and people from regions especially affected by small arms. [...] Additionally, comments on the revised Draft Programme of Action were distributed to the IANSA network, governments and the media. Press conferences created important links with the media and were a tool for awareness-raising (World Council of Churches, 2001).

The primary question on non-governmental advocacy of this research is whether its role in and impact on the emergence and development of norms on conventional arms control and small arms controls are significant. Does it signal a move towards the greater involvement of non-governmental actors in the security sphere and therewith challenge the predictions of traditional views that non-governmental actors will be of limited importance in the security sphere?

## **1.2 Academic literature**

This section provides an illustrative review of the existing academic literature that is of relevance to this research. In particular, it focuses on the literature that is concerned with norms that are promoted by non-governmental actors and the impact of these actors in the emergence and development of norms. Put differently, it focuses on the role and impact of non-governmental actors as “carriers of transformative ideas”



(Sikkink, 1993a, p. 441). This focus is closely associated with the social constructivist approach to international relations theory that emerged in the 1990s. More particularly, it is associated with the ‘middle-ground’ or modernist constructivism that is attributed to scholars including Emanuel Adler, Jeffrey Checkel, Matha Finnemore, Peter Katzenstein, Thomas Risse, Kathryn Sikkink, and Alexander Wendt (see Adler, 2002 for a more detailed discussion of the different strands in social constructivism). Norms and non-governmental actors have, of course, been studied prior to the emergence of social constructivism. They were already discussed in, for example, the context of regime theories and, more broadly, neo-liberal institutionalism in the 1980s. Further, norms already featured in Hedley Bull’s English school of realism and his analysis of the international system as an anarchical society in 1977 (Bull, 1977) and were discussed by the classical realists Hans Morgenthau and E.H. Carr in their influential books *Politics Among Nations* (Morgenthau, 1967) and *The Twenty Years’ Crisis* (Carr, 1939). Nevertheless, the studies that have been conducted on norms and non-governmental actors since the early 1990s, and many of which are inspired by the emergence of social constructivism, have contributed to the emergence of a sufficiently large literature to warrant a literature review that restricts its focus to these studies.

That is, there exists now a substantial body of literature on non-governmental advocacy networks and their efforts to promote new norms in the international system. Studies exist especially in relation to human rights and environmental protection. Sikkink analyses how Argentinean and foreign NGOs formed a network to jointly lobby the US government to put pressure on the Argentinean ruling elite to change its human rights policies in the late 1970 (Sikkink, 1993a). Of further note here is the study by Clark in which she traces the evolution of international human rights norms through the advocacy efforts by non-governmental organisations employing their

“moral credibility, expertise, and popular representativeness” (Clark, 2001, p.138). Keck and Sikkink investigate environmental advocacy networks that advocated changes of rainforest management practices in tropical countries. They emphasise the centrality of information politics to advocacy networks and the role of policy entrepreneurs in efforts to frame policy debates; set agendas; alter the discursive positions of governmental actors; and to influence policies and behaviour of their ‘target actors’ (Keck and Sikkink, 1998, p. 25). Princen traces efforts of non-governmental coalitions to influence the international trade ban on ivory, as well as to shape the ivory management practices of Zimbabwe and Kenya (Princen, 1995). Other studies look at non-state actor advocacy in issue-areas such as the international management of whaling, the international protection of the ozone layer, and the banning of chlorofluorocarbons (Haas, 1992a and 1992b; and Peterson, 1992). The studies investigate how domestic and transnational actors entered into policy coalitions with governments to influence state policies and behaviour. They also highlight the intricacies of inter-network politics and conflicts of interests, as well as the emergence of opposing policy coalitions that seek to counteract the activities and aims of transnational moral entrepreneurs (Keck and Sikkink, 1998; and Peterson, 1992).

There also exists a small but growing literature on non-governmental advocacy on conventional arms control. Hubert analysed how non-state actors sought to influence governments at the ‘Hague Peace Conference’ in 1899 to support an international ban of ‘dum dum’ ammunition (Hubert, 2000, p. 1-3). Risse-Kappen researched the activities of the Pugwash Conferences on Science and World Affairs, as well as of non-governmental networks in the Nuclear Test Ban Treaty in late 50s and the early 60s. The networks included European test ban supporters who entered into transnational policy coalitions with US scientists, activists and government officials to influence the

American position on the test ban. In parallel, US arms control advocates sought to strengthen their domestic position by joining their efforts with those of foreign groups (Risse-Kappen, 1995b, p. 105-8). Adler looked at the efforts of networks of scientists and strategists to influence nuclear policies in the USA as well as abroad. Adler traced how non-governmental advocates sought to establish domestic as well as transnational policy coalitions to pressure the US administration in the context of the negotiations of the Anti-Ballistic Missile Treaty in the early 1970s (Adler, 1992). Another study investigated the impact of transnational networks on shaping the international arms control agenda at the United Nations Special Sessions on Disarmament in the 70s and 80s (Atwood, 1997). Some studies also highlighted the differences between non-state actors who had been given direct access to policy making, and non-state actors who remained 'outside' processes of policy formulation and decision-making (*ibidem*).

Another focus in many of these studies is the impact of advocacy actors under differing domestic structures. The studies argued that advocates had greater difficulties to access policy-making processes in state-dominated structures than in structures under which policy-making was fragmented (Evangelista, 1999; and Risse-Kappen, 1995a). Evangelista analysed advocacy groups who sought to influence Soviet and post-Soviet nuclear policies and strategic defence considerations. Evangelista demonstrated that the changes in the domestic structures in post-Cold War Russia made it more difficult for advocacy actors to influence security policy. This was because the formulation of security policies had become fragmented which meant that a greater number of actors with conflicting interests had access to policy-making processes (Evangelista, 1999). Checkel analysed how policy entrepreneurs sought to influence Soviet and Russian security policies, and how domestic and international institutions and structures influenced such efforts. With respect to the interplay between structures and agency,

Checkel argued that “(t)he adoption of ideas will be more difficult in states with centralized political institutions, where access to decision makers is restricted. Once these ideas are adopted [...], however, the implementation of policies based on them is more likely. In contrast, less-centralized states are more likely to adopt new ideas but less likely to implement them successfully” (Checkel, 1997, p. 7).

A small body of literature is concerned more specifically with the impact of non-governmental advocacy on arms control. An example is the edited book by Cameron which contains studies on the activities of different actors in the efforts to promote a global ban on anti-personnel landmines (Cameron *et al*, 1998). Hubert also analysed the role and impact of advocacy groups in the process that led to the 1997 ban on landmines (Hubert, 2000). Price, Rutherford, and Grillot researched the impact of civil society on agenda setting and the techniques employed by policy entrepreneurs to generate support for the principled idea of a landmine ban (see Price 1998; Rutherford 2000a and 2000b; and Grillot, 2001). Further studies touch on the issue of small arms. Brem and Rutherford compared the advocacy campaign for a ban of anti-personnel landmines with that for greater controls on small arms (Brem, and Rutherford, 2001). In addition, there are studies that consider the interactions between policy actors at the 2001 UN Conference on small arms. The studies often included a consideration of the role and impact of NGOs on the agenda-setting for and negotiations at the conference (Batchelor, 2002; Krause, 2002; Karp, 2001; and Goldring, 2001). Garcia provides one of the most detailed studies so far on the development and diffusion mechanisms of small arms norms in the international system in her book *Small Arms and Security*. Her study includes an assessment of the relative importance of non-governmental actors in the promotion and shaping of small arms norms if compared to the activities of states in this regard (Garcia, 2006).

As shown then, this research project takes place within a well-established framework in international relations theory. At the same time, there remain important gaps in the existing literature. First, little attention is paid to the multitude of norms that make up the field of conventional and small arms control or why norms were adopted in some multilateral and national settings but not others. Second, little attention is paid to the differences in the comprehensiveness, detail, and binding character of norms that address the same issue area. This leaves unexplored important aspects of norm development in the security sphere. Further, there exist few systematic studies that analyse the significance of non-governmental advocacy actors in the changes in conventional and small arms control norms in the last two decades. There exist no studies that analyse and compare the significance of non-governmental advocacy actors across a range of multilateral and national settings. Again, this leaves unexplored important nuances in the understanding of non-governmental advocacy on conventional arms control. One partial exception to these oversights is Garcia's book mentioned above. Nevertheless, her focus and case studies are sufficiently different from what is presented here to warrant this research.

More detailed research on the importance of norms and non-governmental actors in the field of conventional arms control is pertinent because it takes place in the field of 'high' politics. The changes took place in a sphere of international politics that is traditionally understood to be resilient to normative constraints and the influence of non-governmental actors. The implications of the changes for the traditional understanding of security governance remain poorly understood. This research addresses this gap. It seeks to contribute to the debates about the types of norms that diffuse in the international system as well as the means of their diffusion. It elaborates a

model for the understanding of norms development that seeks to overcome limits in existing models. It also seeks to contribute to the debates on the importance of non-governmental advocacy networks by considering their significance in various multilateral and national settings. A further model for the comparative analysis of the relations between governments and non-governmental actors at national levels is developed to this end. This research project therefore builds on and further develops existing approaches to the study of norms and non-governmental actors in the field of conventional arms control.

### **1.3 Research framework**

The motivation for this project is to assess whether the traditional understanding of security governance is still adequate in light of the changes in conventional and small arms controls in the last two decades. Are the changes just superficial without challenging the established view of the way control policies are actually developed and implemented? Or do they signal a significant shift towards a greater governance of security policies, that is, a governance structure that is increasingly based on regulatory norms and the involvement of non-governmental actors? As suggested above, the traditional system of the governance of arms controls is based on the primacy of states and the exclusivity of governments in the management of national controls on conventional and small arms. States are expected to limit their cooperation if this undermines their ability to ensure their survival in an anarchical and potentially hostile environment. Further, “the high politics of security policy is [in the conventional wisdom] where the state ought to be the most autonomous from society at large and able to set its sights on military imperatives relatively independent of societal pressures, whether domestic or international” (Price, 1998, p. 613).

The emergence of multilateral control norms on conventional arms and especially small arms and the active participation of non-governmental actors in their development are surprising from this perspective. But do they call into question the primacy of states and exclusivity of governments? Norms may be restricted to only vague statements of intention by states without restricting their flexibility or indicating a greater willingness to cooperate on their national arms controls. Non-governmental advocacy actors may play active and visible roles in policy debates on arms controls without having a significant impact on policy outcomes.

This research assesses the significance of the changes by contrasting them against what may have been expected by traditional views of security governance. As mentioned, there exist important differences between classical realism, neo-realism, and neo-liberal institutionalism. Neo-realism is critical of its classical predecessor for its inclusion of human nature in causal explanations of state behaviour and, in contrast, considers the international structure as the determinate factor for state behaviour. Neo-liberal institutionalism is critical of especially neo-realism for its exclusion of norms and non-governmental actors in, if not necessarily the security sphere, than at least in other areas of international relations.

All three traditional views are criticised by post-positivist approaches for their rationalist foundations that emphasise empiricism and ignore the mutual constitution of agency and structure and the multitude of state and non-state actors that shape and define concepts such as the national interest (see e.g. Terriff *et al.*, 1999, for a discussion of the various criticisms). This research echoes some of the existing criticism by not excluding, *prima facie*, norms and non-state actors from the analysis of changes in conventional arms control. Its aim is to investigate whether the changes in conventional arms control provide evidence for the relevance of criticism of the

traditional views even in an area of ‘high’ politics such as conventional and small arms control.

It is in this context that the research seeks to assess whether there is evidence for a shift towards a governance of conventional and small arms control that is increasingly characterised by normative constraints and non-governmental actors. In other words, do the norms and the role and impact of non-governmental actors in the promotion of these norms provide evidence for a greater willingness of states to cooperate in the security sphere with each other as well as with non-governmental actors? As indicated, this research asks two primary research questions. They are:

1. Do the norms on conventional arms control that states adopted in the last two decades significantly constrain their national flexibility and exclusivity in the security sphere?
2. Does the role and impact of non-governmental advocacy actors in the promotion of these norms confirm their increased significance in the field of conventional arms control?

To clarify, a traditional framework need not exclude the emergence of constraining norms and non-governmental influences in the governance of conventional and small arms control. A traditionalist approach is not contradicted by the adoption of norms that reinforce the national security of a state through its cooperation in military alliances or confidence building measures that reduce the risk of being attacked by other states. A traditionalist approach is also not contradicted by the cooperation between governments and non-governmental actors if this cooperation serves to further governmental aims.



The two primary research questions are complemented therefore by several subsidiary questions to assist in determining the significance of the normative changes and of non-governmental actors in these changes.

Specifically, the subsidiary questions aim to assess whether the adopted norms reflect a significant change in the perception of states of their interests in relation to conventional and small arms control. A significant change would be indicated if states adopted constraints on their flexibility and autonomy in militarily sensitive issues not to reinforce their own security in light of possible foreign aggression but to pursue the morally inspired goals of reducing instability and violations of international humanitarian law in other parts of the world. The subsidiary questions further aim to investigate whether the role and influence of non-governmental actors go beyond traditionalist expectations. This would be indicated if these actors are demonstrated to have made crucial contributions to normative developments and changes of governmental interests in relation to conventional and small arms control.

In relation to norms, subsidiary questions are:

- 1.a. To which degree do the norms adopted by states constrain national security interests and confirm changes in these interests?
- 1.b. To which degree do the comprehensiveness, detail, and binding character of the adopted norms constrain and confirm changes in security interests?
- 1.c. What explains the differences in the norms in the various multilateral and national settings as well as their continued development in some settings?

In relation to non-governmental actors, subsidiary questions are:

- 2.a. To which degree did non-governmental advocacy actors participate and provide leadership roles in the development and diffusion of norms?
- 2.b. To which degree did non-governmental advocacy actors succeed in seeing their policy aims in relation to norm development realised?
- 2.c. What were the conditions that influenced the degree to which non-governmental advocacy actors saw their policy aims realised?

### *1.3.a Research strategy*

The research begins with a comparative analysis of relevant norms and their development at the global level as well as regional and sub-regional levels. This is complemented with the analysis of non-governmental advocacy on the development of global norms. The research then focuses on the analysis of norms and non-governmental advocacy at the level of the European Union. It subsequently provides a comparative analysis of national dialogues between governments and non-governmental actors in EU member states and provides an in-depth study of a national case in the EU. To avoid confusion, the analysis concerning developments in the EU and its member states primarily focuses on norms on conventional arms. This is because EU states principally address issues such as small arms exports and transparency on exports in the context of controls on conventional arms. In contrast, multilateral instruments and advocacy outside the EU are often limited to controls on small arms only. The relation between norms on conventional arms control and controls on small arms is further explained in chapter three. Further, it should be noted that the analysis of norms and non-governmental advocacy does not aim to be comprehensive in relation to the multitude of norms that were debated at multilateral and national levels. Rather, it is restricted to a selection of norms that non-governmental actors advocated.

The selection of norms, as well as of the national case studies in the EU, is based on the different insights that can be gained from the respective analyses and that are clarified and justified in the relevant sections of this research.

The means of data collection for this research include the content analysis of over 20 multilateral instruments on conventional arms and small arms controls as well as of the relevant national legislation and political guidelines in EU states. The means of data collection also included the content analysis of numerous non-governmental research and advocacy publications as well as the conduct of about 60 semi-structured interviews with key informants in the period 2003-09. Respondents included representatives of relevant inter-governmental organisations, national ministries, parliaments, arms producing companies, and NGOs. The research further benefited from numerous additional exchanges with key informants. The exchanges took place mainly in the framework of the author's work as an arms control researcher at a Belgian non-governmental research centre. The work allowed the author to participate in various inter-governmental meetings at global, regional, and sub-regional meetings in Africa, the Americas, and Europe. This included the presentation by the author of his research findings on arms control challenges in official meetings and side events of multilateral meetings as well as the participation in the Dutch delegation to the 2005 UN meeting on small arms. It also allowed him to participate in non-governmental efforts to promote strengthened controls on conventional and small arms. It thereby offered him the opportunity to conduct this research in the spirit of participatory observation.

The research strategy and methodology employed here bear the inherent risk of subjective basis. This is because the research relies on a social constructivist approach that utilises the 'un-measurable' entities of norms and is underpinned by participatory

observation. Also, the research cannot provide an empirically measurable proof for the significance of norms and non-governmental actors. The principal method for mitigating these methodological weaknesses in this research is triangulation of case studies and respondents. That is, the research contrasts the analysis of norms that may be expected to emerge and diffuse more easily with that of norms that may be expected to emerge and diffuse less easily. The research also contrasts global developments with those at regional and especially the EU level as well as national developments within the EU.

Further, the interviews for this research were conducted with government officials, industry representatives, parliamentarians, and non-governmental control campaigners. The interviews allowed therefore for the triangulation of different respondent groups. In addition, the identification of clear limits to the potential influence of NGO advocacy is not prevented by the choice of ‘best cases’ for the potential advocacy impact. It consequently does not risk overstating the potential influence of non-governmental actors. The author’s participation in several of the processes referred to in this research also allowed him to gain a balanced insider’s view of the impact and limits of non-governmental advocacy. The question whether the changes in control norms contributed to changes in governmental practices is valid but, for reasons of space, falls outside the scope of this research.

### *1.3.b Structure of the research*

This research is presented in seven chapters. The following second chapter further locates the research in its theoretical context. It presents existing models for the understanding of norm development and presents the model of the internal life of norms that was designed for this research to allow for a more nuanced analysis than possible

with the existing models. The chapter then presents different theoretical positions on norms and non-governmental advocacy actors in international relations and, especially, in relation to the security sphere. It then elaborates assumptions that may be deduced from traditional views on security about the types of norms on conventional arms control that may be expected to emerge as well as the likely influence of non-governmental actors on the development of these norms. These assumptions or predictions will serve as benchmarks against which to assess the significance of the changes in conventional arms control in the last two decades in the subsequent chapters. Chapter two concludes with a restatement of the research questions and the terminology that is used in this research.

Chapter three focuses on the multilateral norms on especially small arms control that states adopted since the 1990s. It identifies the issues on which states adopted relevant control norms as well as the spread of these norms among the various multilateral control instruments. The chapter then turns to several case studies of specific norms in the various multilateral settings to investigate their commonalities and differences. This includes an assessment of the levels of comprehensiveness, detail, and binding character of the norms. The discussion is complemented with an assessment of possible explanations of the variance in the adopted norms as well as, where relevant, of their continued development. Chapter three principally addresses therefore the research questions regarding the possible significance of the adopted norms at multilateral levels in light of traditional views on arms control. Specifically, it seeks to identify whether the norms can be considered as having little impact on national flexibility on arms control and security interest or whether their adoption may suggest an increased willingness of states to cooperate in the security sphere.

Chapter four considers the role and impact of non-governmental advocacy in the emergence and adoption of global norms on especially small arms control. It starts by considering the various roles of non-governmental advocates in supporting the emergence of global norms on small arms control. It then considers the impact of such advocacy in the context of 2001 UN Programme of Action on small arms by investigating the success of non-governmental actors in seeing their policy aims realised in this instrument. The chapter subsequently turns to the impact of non-governmental advocacy on the development of global norms on especially small arms control since 2001. The analysis is complemented with an assessment of the conditions that favoured or constrained the impact of non-governmental advocacy. Chapter four principally addresses therefore the research questions regarding the importance of non-governmental advocacy at the global level in light of traditional views on security governance. It seeks to determine whether such advocacy can be considered as inconsequential or whether it may suggest an increased willingness of states to cooperate with non-governmental actors in the security sphere.

Chapters five and six complement the preceding research by focussing on conventional arms control norms and the significance of non-governmental advocacy in relation to the development of these norms at the level of the European Union (chapter five) and national levels in the EU (chapter six). Chapter six includes a comparative analysis of different national levels of cooperation and engagement between governmental and non-governmental actors in the EU member states. This is complemented with an in-depth case study on norms and non-governmental advocacy in the UK. Both chapters address therefore the same research questions as chapters three and four but do so in relation to different levels of analysis, i.e. regional and national levels in the EU. Likewise, chapters five and six seek to determine whether the

norms that EU states adopted at the regional and the selected national levels suggest significant changes in the willingness of states to cooperate with each other as well as with non-governmental actors. In addition, the two chapters allow for an analysis of the possible interplay between norms and non-governmental advocacy between global, regional, and national developments.

Chapter seven presents a summary of the main research findings and considers their implications for the existing literature on norms and non-governmental actors in international relations theory. In particular, it considers the degree to which changes in conventional arms and small arms control norms as well as the role and impact of non-governmental advocacy on the development of these norms are significant and challenge traditional views on security governance. The chapter then turns to an assessment of the contribution of this research to debates in international relations theory. It concludes with the identification of possible avenues for the further investigation of the issues and developments that are raised in this research.

## **Chapter 2: Theoretical framework**

Chapter two further locates this research in its theoretical context. Its first section presents different analytical models of norm development and presents the approach that is used here for the subsequent investigation of the relevant norms that states adopted in the last two decades. Its second section provides an outline of different theoretical positions on the potential significance of norms and non-governmental advocacy in international relations theory and, more specifically, in relation to the security sphere. Its third section elaborates predictions that may be deduced from the different theoretical positions on the likely significance of norms and non-governmental actors in the changes under consideration. The predictions will be used as benchmarks for assessing the significance of the changes in the course of the following research. Its concluding section restates the primary research questions and refines the terminology that is used in this research.

### **2.1 Models of norm development**

Social constructivists highlight lines of enquiry that trace the evolution of norms as a means to identify changes in international politics. Finnemore and Sikkink provide the most prominent model for the analysis of normative changes. The model of the 'norm life cycle' follows the development of a norm on the basis of a three-phased process. During the first phase, norms emerge through the efforts of norm entrepreneurs who actively engage in the promotion of new normative standards in an issue area. Norm entrepreneurs frame and present given issues in terms that describe them as 'problematic' situations. They propose possible solutions and build both awareness and support for the adoption of relevant measures. The second phase of norm 'cascading' begins when a critical mass of states adopted the new norm. Norms spread and are



adopted by an increasing number of states during a norm cascade. The third stage in the development of a norm is its internalisation by states. At this point it has acquired a 'taken-for-granted' quality for which it is almost automatically applied, and no longer contested (Finnemore and Sikkink, 1998).

Constructivists also offer insights into possible pathways for the development of norms and the ways in which advocacy actors may seek to influence their domestic governments. An example is the 'boomerang pattern'. It describes the process by which NGOs may seek to bypass their state and search international allies to bring pressure on their government from abroad (Keck and Sikkink, 1998, p. 12). Other constructivists have elaborated and complemented this understanding. An example is the 'spiral model' that was developed by, amongst other scholars, Risse. The model details several incremental steps in the socialisation process by which domestic actors seek to bring outside pressure on their governments in support of a specific norm. Specifically, it details how governments may pass from a stage of denial of the validity of a norm that is advocated by domestic actors to the stage of tacit concessions and, finally, the acceptance of the prescriptive status of the norm (Risse *et al*, 1999. p. 235f).

The model of the norm 'life cycle' and those on the pathways of norm diffusion offer useful starting points for the analysis of the development of norms on conventional arms control in the last two decade. Following the model, norms on conventional arms and especially small arms were often in their first stage of evolution in the late 1990s and early 2000s. The norms began to diffuse and cascade in multilateral settings with their adoption by states in the various conventional arms and small arms control instruments since particularly the early 2000s (see chapter three). To speak of an internalisation of norms would require that states implement the norms in domestic regulations and apply them as part of normal operations of their domestic

arms control systems. The utility of the norm life cycle model is also demonstrated by Garcia who applies the model to a detailed discussion of the emergence and diffusion of certain small arms norms at the global level (Garcia, 2006). The model of the 'life cycle' as well as those on norm diffusion are ill-equipped, however, to fully account for the variety and changes in internal characteristics of norms.

In particular, the various models tend to represent norm evolution as a single process. For example, the model of the norm 'life cycle' presents the evolution of a norm as a process in which this evolution coincides with an increase in the number of states that accept and adopt the norm. A norm is either present (at an infant, developing or internalised stage) or absent in this view. The 'life cycle' model also creates the image of norms as unitary entities that emerge, cascade, and become internalised without substantially changing. That is, the model does not account for the differences that may exist between norms in the same issue area. The same criticisms can be raised in relation to the models of the 'boomerang pattern' and the 'spiral model'. It must be emphasised in this context that this characterisation of the existing models is a gross simplification and does not reflect theoretical positions of constructivists. Nevertheless, none of the cited models explicitly addresses the possible variance between and changes within norms in the same issue area.

Indeed, both Garcia's and this research indicate that norms may not necessarily evolve in a uniform manner at the international level as "most of the research on norms implies" (*ibidem*, p. 197). The development of a norm can comprise a complex set of multiple, sometimes overlapping processes rather than coincide with one single process. Further, Garcia's and this research demonstrate that norms within the same issue area can be varied and that, rather than developing as unitary entities, may contain various components that "will deepen and take root, with varying degrees of robustness, in the

different contexts” (*ibid.*). It is against this background that this research elaborates a further model with the aim to overcome the limits of those that constructivists have already developed.

### **2.1.a The internal life of norms: a new model of norm development**

One of the foci of this research project is the detailed analysis of the norms that states adopted on conventional and on small arms control in the last two decade. The project soon encountered the problem that existing models of norm development and diffusion are ill-equipped for a nuanced comparison between different multilateral and national norms in the same issue area. They are also ill-equipped to describe possible changes in internal characteristics of norms. In response, this research project developed the model of the ‘internal life’ of norms to allow for a more detailed analysis of norm development. The model was developed by identifying key variables within norms in the same issue area as well as possible pathways for the changes in internal characteristics of these norms.

The model does not seek to replace existing constructivist models but to complement these models and address aspects of norm development that are not captured by them. Further, the model of the ‘internal life’ does not contradict established models. Rather, it builds on and is consistent with constructivist understandings about norms. It complements existing models by allowing for detecting differences and changes between and within normative issue areas that are not addressed by the established models.

In detail, one assumption of the model of the ‘internal life’ is that norms are interconnected within a given issue area. This builds on the constructivist understandings. For example, Finnemore argues that “(i)t may make more sense to

think of a fabric of interlocking and interwoven norms rather than individual norms of this or that” (Finnemore, 1996, p. 161). Similarly, Keck and Sikkink point to the logical connections between norms. They argue that norms are especially amenable to advocacy if they address “issues involving bodily harm to vulnerable individuals, especially when there is a short and clear causal chain (or story) assigning responsibility” (Keck and Sikkink, 1998, p. 27). The norm that states should combat the illicit trade in small arms is logically linked to the more basic norm that states should prevent bodily harm to vulnerable individuals. This is because the illicit small arms trade is generally framed as contributing to the deaths of hundreds of thousands of innocent victims each year. The norm to combat illicit small arms may be seen therefore as a subsidiary norm to the more basic norms to prevent bodily harm to vulnerable individuals.

The logical connections within a given issue area are further illustrated by the normative cluster that makes up small arms controls. The basic norm that states should control small arms provides the basis for a range of subsidiary norms that elaborate measures to effectively control small arms. Possible subsidiary norms include that states should trace illicit small arms and control small arms transfers. Further subsidiary norms are that states should control small arms brokering, stockpiles, and civilian possession. Each of these subsidiaries can provide a basis for further subsidiary norms within the specific issue area. The norm that states should ‘trace illicit small arms’ provides the foundation for the subsidiary norms that states should ‘mark small arms’, ‘keep records on small arms’, and ‘cooperate in tracing illicit small arms’. The norm that states should ‘control small arms brokering’ provides the foundation for subsidiary norms to ‘license small arms brokering’ and ‘register small arms brokers’ (see figure one below). Each of the subsidiaries may provide the basis for yet further detailed

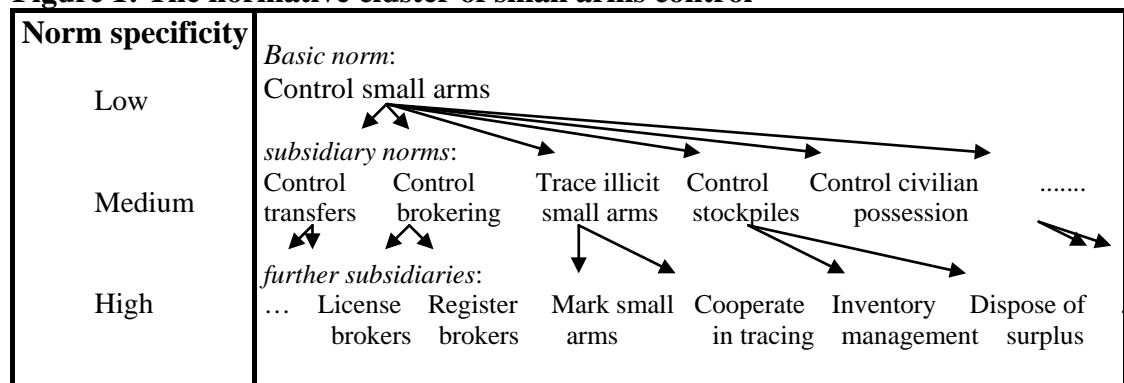
measures. Complementing the basic norm to control small arms, the subsidiaries provide greater detail and, depending on their range, a greater level of comprehensiveness for the normative cluster on small arms control.

A second assumption of the ‘internal life’ model is that norms within a given issue area can differ in their internal characteristics. As indicated, levels of detail and comprehensiveness (together referred to as the level of specificity) may differ within a normative cluster (see figure two below). Another variable is the binding character of norms that may range from non-binding declarations of intent by states to legally binding treaties. The binding character of norms can also differ on the basis of their formulation. They may range from encouraging states to consider certain measures to legally obliging states to take certain measures. Together, levels of specificity and binding character are understood to define maturity of a normative cluster. A low level of maturity exists in a cluster in which states only commit to norms that are little detailed and comprehensive and of a weak binding character. A high level of maturity exists in a cluster that is characterised by high levels of specificity in subsidiary norms and a strong binding character. To illustrate, to speak of mature small arms control norms would require the adoption by states of a legal commitment to implement a comprehensive range of highly detailed measures to effectively control small arms.

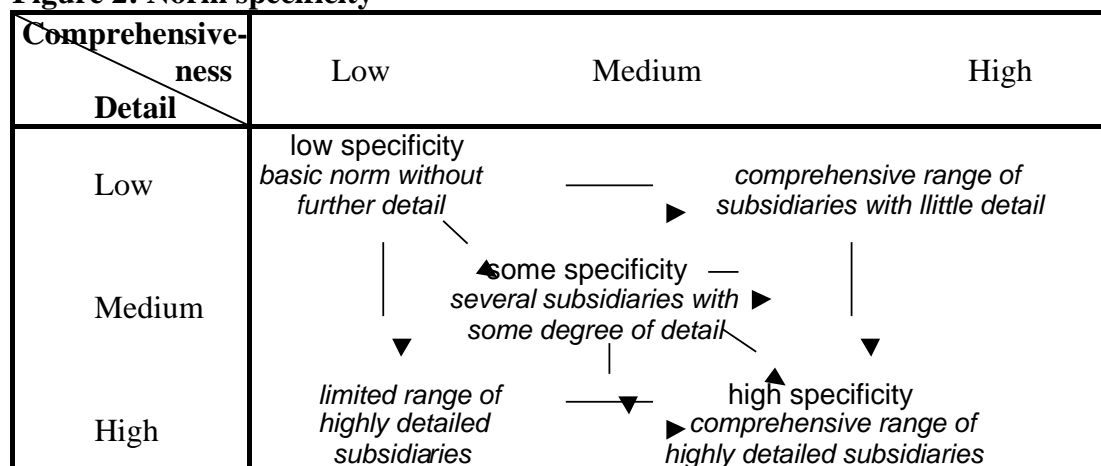
A third assumption is that the internal characteristics of norms are amenable to change. Again, this builds on constructivist understandings. Finnemore highlights the importance of internal characteristics of norms when arguing that the “logic internal to [...] norms shapes their development” (Finnemore, 1996, p. 174). This means that a norm with a low level of maturity may become more mature with the adoption of more detailed and comprehensive subsidiary norms and/or the strengthening of their binding character. The ‘internal life’ of a norm refers to the potential development of a norm

from a basic norm of low specificity and binding character towards a mature norm with high levels of specificity and binding character (see figure three below). The maturing of a normative cluster is reflected in global developments on small arms control. The UN Secretary General promoted the basic norm that states should control small arms in 1995. Governmental expert groups and non-governmental actors subsequently identified various subsidiary norms they promoted as required to effectively control small arms. States then adopted control norms and in some cases further developed the norms in the early and mid 2000s (see chapter three).

**Figure 1: The normative cluster of small arms control**

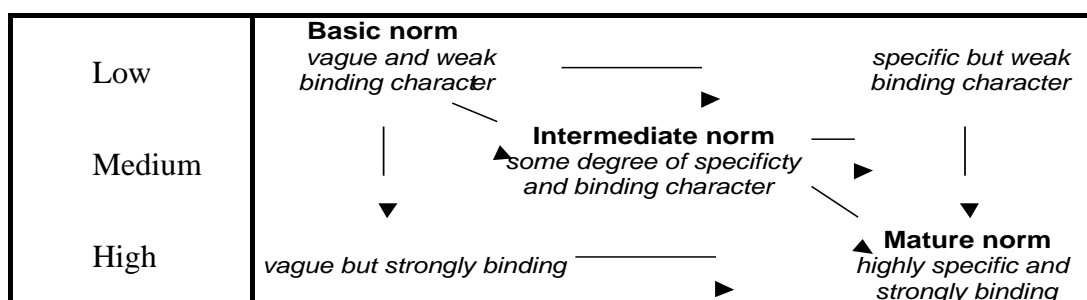


**Figure 2: Norm specificity**



**Figure 3: Internal development of norms**





## 2.2 Theoretical positions on norms and non-governmental actors

The significance of norms and non-governmental actors are contested in international relations theory. Within the framework of theories that espouse ‘traditional views’ on security, the debate takes place, in simplified terms, between classical and neo-realists on the one hand and neo-liberal institutionalists on the other. As previously indicated, these theories have been criticised by a variety of other perspectives that include feminism, neo-marxism and critical theory, as well as social constructivism and other forms of post-positivist approaches. These latter theories generally disagree with the ontology and/or epistemology of the established realist and liberal approaches and propose to fundamentally transform the more dominant and established traditional understandings of international politics. Worth mentioning in this context are also criticisms of the traditional views that, while not necessarily linked to particular theoretical approaches, argue that the traditional focus on conflicts between states ignores the various non-traditional threats that have become subject of increased international attention since the early 1990s. Examples of such threats include, to name but a few, terrorism, transnational organised crime, and environmental degradation and global warming (see e.g. Terriff *et.al.*, 1999, and Collins *ed.*, 2007, for overviews of the debates in relation to security studies).

Having said this, this section principally concentrates on the views of realist and liberal approaches on the role of norms and non-governmental actors in international

relations. This is because the major theme of this research is to assess whether the changes in conventional arms control challenge the understanding of these theories and their ‘traditional views’ on security governance. Nevertheless, the section will also include a short presentation of the social constructivist approach to norms and non-governmental actors. This is done because this research follows constructivist insights in its assessment of the relevance of the traditional views on security governance. The question of what role the other approaches mentioned above may attribute to norms and non-governmental advocacy in the security sphere and, more precisely, in the field of conventional arms control will be addressed in the concluding section of this chapter.

### **2.2.a Realist approaches to norms and non-governmental actors**

Realist approaches to the study of international relations are often critical of the notion that norms can play a significant role in international politics. There are exceptions such as the English school of realism that holds that the international system is underpinned by certain norms that lead states to operate in an ‘anarchical society’ (see e.g. Bull, 1977). Nevertheless, even the English school of realism does not directly address norms that are promoted by non-governmental actors. Rather, as argued by Wendt, “the starting point for most [realist] theorizing about international politics has been power and national interest, with power understood ultimately as military capability and interest as an egoistic desire for power, security, or wealth” (Wendt, 1999, p. 92). For especially neo-realists, it is the relative distribution of power that determines the interests of a state at the multilateral level (see for example Checkel, 1997, p. 8-13). Normative principles about what states *ought to do* are seen as, at best, inconsequential or, at worst, detrimental to the material interests of states to secure their survival.



Especially classical realists also argue that statesmen may only pay lip-service to normative standards to appease domestic and international audiences or support certain norms only to further the materialist interests of states. Norms are understood in this view as “instrumentally used by political elites seeking to advance their political position; in themselves, [norms] are an epiphenomenon” (Checkel, 1997, p. 127). An illustration is the criticism of Western human rights policies which understands these policies as “a means of promoting the hegemony of capitalist values by emphasising political freedom as opposed to economic rights” (cited in Sikkink, 1993b, p. 159). While clad in normative, principled terms, Western human rights policies are held to simply mask material interests of their proponents. In other words, norms are seen as a direct function of power with the most powerful states seeking to impose their views and references on others in the international system.

Of note in this context is also the realist critique of, for example, Mearsheimer of the potential role that neo-liberal institutionalists attribute to norms in the context of regimes that coordinate state behaviour on the basis of self-interested cooperation (see below). Mearsheimer argues that neo-liberal institutionalism “is of little relevance in situations where states’ interests are fundamentally conflictual and neither side thinks it has much to gain from cooperation. [...] Therefore, the theory largely ignores security issues and concentrates instead on economics and, to a lesser extent, environmental issues” (Mearsheimer, 1995, p. 342). Mearsheimer makes a reference thereby to the realist critique that norms may be of greater relevance for theorising about international politics in areas of ‘low politics’ than in the area of security policy.

Realists also generally reject the notion that the dynamics of globalisation have a profound impact on the fundamental drivers and characteristics of international politics. ‘Globalisation’ refers to the increasing interconnectedness between states and between

state and non-governmental actors through the expansion of cross-border movements of people, goods, and ideas. Realists argue that states continue to dominate international politics and “set the basic rules and define the environment within which transnationals must function” (Krasner, 1995, p. 279). This does not mean that realists ignore the existence of non-state actors. Waltz holds that “(t)he importance of non-state actors and the extent of transnational activities are obvious”. Waltz adds however that “(t)he conclusion that the state-centric conception of international politics is made obsolete by [non-state actors] does not follow” (Waltz 1979, p. 88). Thus, in direct confrontations between states and non-state actors, it is the state that proves to be the more influential competitor. As argued by Waltz,

“(s)o long as the major states are the major actors, the structure of international politics is defined in terms of them. ... States set the scene in which they, along with nonstate actors, stage their dramas or carry on their humdrum affairs. Though they may choose to interfere little in the affairs of nonstate actors for long periods of time, states nevertheless set the terms of the intercourse ... When the crunch comes, states remake the rules by which other actors operate” (*ibidem*, p. 89).

Another line of realist argumentation focuses on the instrumental use by states of non-governmental actors. Gilpin argued that “transnational actors have [only] been able to play an important role in world affairs because it has been in the interest of the predominant power for them to do so” (Gilpin, 1972, p. 54). Similarly, one analyst of the Pugwash Conferences on nuclear disarmament argued that the conferences served “to demonstrate how transnational actors may be used by official actors to achieve governmental ends” (Scheinman, 1972, p. 297). A further line of argumentation holds that non-governmental actors may only play prominent roles in international politics if little is at stake for states. This argument was made with respect to, for example, the

Ottawa process that led to the global ban on anti-personnel landmines. It was argued that non-state actors were allowed to be involved in policy-making only because many states considered anti-personnel landmines to be unimportant to their defence needs (Croll, 1998).

### **2.2.b Liberal approaches to norms and non-governmental actors**

Schools of thought in international relations other than realist theories are generally more open to the notion of norms and non-governmental actors as potentially shaping and influencing international politics. An example is the neo-liberal approach by Goldstein and Keohane. They argue that “ideas influence policy when the principled or causal beliefs they embody provide roadmaps that increase actors’ clarity about goals or ends-means relationships, when they affect outcomes of strategic situations in which there is no unique equilibrium, and when they become embedded in political institutions” (Goldstein and Keohane, 1993, p. 3). Ideas and norms can provide decision-makers with a blueprint “for interpreting international politics and shaping preferences, as well as a sense of the proper instruments to use in promoting state interests” (Checkel, 1997, p. 5).

Keohane and others also highlight the possible role of norms in altering state preferences and, subsequently, state behaviour in the context of international institutions or regimes. Specifically, Keohane argues that states are not always motivated by a desire to achieve relative gains over other states and that cooperation between self-interested states is possible even in an anarchical system. The creation of cooperative regimes reduces transaction costs, and regimes may endure even the decline of a hegemonic power because the continued cooperation in the regime

provides an overall if possibly uneven benefit for the participating states (Keohane, 1984).

A related line of argumentation about the scope for cooperation between states is offered by the functionalist approach by Mitrany. While not focussing on norms as an underpinning variable for cooperation, Mitrany argues that cooperation may increase in incremental steps. That is, states may begin to cooperate on a limited set of issues but, with time, extend their cooperation to other issues due to a 'spill-over' effect. This effect may occur with a growing material interdependence between states and is facilitated by international institutions that, on behalf of states, take over coordination roles in limited function, technical, and/or economic areas (Mitrany, 1975). To adapt Mitrany to the neo-liberal discourse, the 'spill-over' effect may occur with an increase in the level of trust and socialisation between states and their recognition of the benefits of cooperation on specific issues.

Liberal theories in international relations are generally also supportive of the argument that the dynamics of globalisation are altering the relations between state and non-state actors. Keohane and Nye argued that the international political environment was increasingly populated by influential and often autonomous non-state actors already in the 1970s (Keohane and Nye, 1972, p. xxiv-v). They asked whether "the territorial state [...was] being eclipsed by nonterritorial actors such as multinational corporations, transnational social movements, and international organizations" (Keohane and Nye, 1989, p. 3).

Rosenau is among the best-known proponents of the view that globalisation dynamics have a profound effect on international relations. He argues for a re-conceptualisation of international politics that moves away from understanding politics as the exclusive domain of struggles between states over power and influence. Rather,

he argues, international politics should be understood in terms of the activities of a multitude of state and non-governmental actors who seek to frame goals and determine policies within a particular sphere of authority. In their totality, the spheres constitute a system of global governance that is “conceived to include systems of rule at all levels of human activity” (Rosenau, 1995, p. 13). Policy-making authority within this system of global governance is increasingly shared between state and non-state actors.

Rosenau further argues that non-governmental actors are putting increasing pressures on states to satisfy demands, and that they could be “central actors in the [policy] deliberations ...relevant to their spheres of activity” (*ibidem*, p. 23). The participation of non-governmental actors in spheres of governance may also fulfil important requirements that “outstrip the capacity or readiness of governments to provide” (*ibid.*). Rosenau does not argue that states are becoming irrelevant. Instead, he argues that “(m)uch governance will doubtless continue to be sustained by states ... initiating and implementing policies in the context of their legal frameworks” (*ibid.*, p. 19). What changes, however, is that states will increasingly need to include non-governmental actors in policy-making processes to ensure the adequacy and effectiveness of the adopted policies.

### **2.2.c Social constructivist approaches to norms and non-governmental actors**

Social constructivism differs from the realist and liberal theories referred to above inasmuch as it does not take the anarchical international system and the egoistical pursuit by states of their self-interest as the starting point for theorising. Indeed, the moderate social constructivism that underpins this research project may, in some respects, be better understood as a methodology rather than a theory about international relations. That is, social constructivism has clearly defined positions on the mutual

constitution of structure and agency in the international system. It also rejects the positivist approach of, amongst other theories, neo-realism and neo-liberalism that maintains the existence of an objective and knowledgeable world which is separate from the observing individual. But social constructivists do not necessarily deduce preconceived views about state behaviour from their approach. This point is illustrated by Wendt's well-known statement that 'anarchy is what states make of it' (Wendt, 1992). Rather, the 'constructivist turn' in international relations theory in the 1990s (re-)opened avenues for research into aspects of international relations that did not feature in the more established theoretical approaches (see chapter one). This project understands itself to firmly fall within this social constructivist approach.

Notwithstanding the above observations, many social constructivists share certain assumptions of especially liberal approaches to international relations theory. This is clearly the case in relation to the potential role of norms in international politics. Evangelista, for example, holds that norms and ideas can have a causal impact on foreign policy formulation. He argues that "(i)ntroducing transnational actors and their ideas into a policy debate can change the dynamics of the domestic political scene" (Evangelista, 1999, p. 19). With regards to his analysis of Soviet and post-Soviet politics, Evangelista argues that "ideas promoted by transnational actors helped facilitate the formation of new domestic political coalitions by identifying previously unrecognized common interests among disparate groups" (*ibidem*). Checkel highlights the role of ideas and norms in the policy formulation on security issues in the Soviet Union:

"it was not simply individuals and their beliefs who determined the role played by ideas. In particular, ideas that were historically rooted in particular organizations and agencies also played a crucial role – both in hindering and promoting international political change. On the former, ideas about the class nature (in the [state] apparatus) and zero-sum quality of

international politics (in the Ministry of Defence) played a central role in shaping Soviet interests and behavior” (Checkel, 1997, p. 125).

Another assumption that is shared between many social constructivists and liberal approaches to international relations theory concerns the potential role of non-governmental actors. As indicated, the role of such actors in international politics has been debated since at least the 1970s. A characteristic of the early debates was the understanding that any increase in influence of non-state actors came at the expense of the power of state actors. Risse-Kappen refocused the debate by arguing that inter-state and transnational relations were not necessarily exclusive of each other in the mid 1990s. He argues that “(o)ne can subscribe to the proposition that national governments are extremely significant in international relations and still claim that transnational relations crucially affect state interests, policies, and inter-state relations” (Risse-Kappen, 1995a, p. 15). His main question in this context is “under what domestic and international circumstances do transnational coalitions and actors who attempt to change policy outcomes in a specific issue-area succeed or fail to achieve their goals?” (*ibidem*, p. 5).

Keck, Sikkink, and other social constructivist scholars added to the debate in the late 1990s by looking at the success of non-state actors in promoting norms and principled ideas in the international system. Their focus on transnational advocacy networks is less concerned with the circumstances that facilitate or hinder non-state actor influence. Rather, they investigate the role of non-state actors who promoted ‘transformative ideas’ that shaped the international system (Keck and Sikkink, 1998). To restate, the present research follows this line of interest and seeks to determine the significance of non-governmental actors and the norms they promote in relation to

conventional arms control. Indeed, some research has already been conducted in the same line of interests, and some scholars explicitly support the claim that non-governmental actors can be significant in the sphere of international peace and security.

Price finds that, in respect to agenda setting, “there is no particular handicap for NGOs working on security issues compared to other issues such as the environment or human rights” (Price, 1998, p. 622). Hubert argues that the “remarkable transformation in government policy [which led to the ban of dum dum ammunition at the 1899 Hague Peace Conference] can be attributed to the lobbying of NGOs during the conference” (Hubert, 2000, p. 22). Rutherford argues that NGOs significantly influenced the 1997 ban on anti-personnel landmines by “changing the debate from a political to a humanitarian issue, drawing media and public attention to the issue, and ultimately educating states about the limited military utility and dramatic negative humanitarian effects of landmines” (Rutherford, 2000a, p. 77).

### **2.3 Predictions about norm emergence and non-governmental influence**

The present research assesses the significance of changes in conventional arms control in light of traditional understandings of security governance. The principal method for this assessment is a comparison between what happened with what one may have expected from the point of view of traditional understandings of security governance. As indicated, there exist differences between the various realist theories as well as between realist theories and neo-liberal and other liberal-inspired, positivist theories. These differences notwithstanding, the theories generally share the common starting point that states are rational and self-interested entities that will limit their cooperation with each other and with non-governmental actors if this constrains their national flexibility in the security sphere. It is for this reason that these theories are jointly



referred to as traditional approaches to security governance in this research. It is for the same reason that proponents of these theories will be referred to as traditionalists in this research (see also section 2.4 on the use of terminology below).

In more detail, traditionalists are sceptical about the possible importance of norms and non-governmental actors in the field of conventional arms control. They would also be sceptical about the potential importance of the changes in conventional arms control. A traditional approach does not deny a possible role of norms and non-governmental advocacy in the security sphere. But it predicts that changes to the willingness of states to cooperate with each other and with non-governmental actors will be limited. The changes are not expected to challenge the primacy of states or interfere with national security interests. The changes are not expected to seriously constrain the flexibility of governments to decide on and implement national arms controls. If the predictions are proven correct it cannot be claimed that changes in conventional arms control were significant. The traditional understanding of security governance would therefore remain unchallenged by the changes in conventional arms control.

This section elaborates on possible predictions by traditionalists about the changes in relation to conventional arms control. It considers predictions about the types of norms that are expected to emerge on conventional arms control as well as the possible role and influence of non-governmental actors in their promotion. Norms on conventional arms control differ in their scope and maturity. They therewith also differ in their relevance to national security interests. The differences in control norms are a result of the way they are framed and of different internal characteristics. The first sub-section identifies different frames of control norms. The second sub-section identifies traditionalists' predictions about the likely frames of control norms and their maturity. The third sub-section identifies predictions about the significance of non-governmental

actors in the promotion of the norms. The predictions will serve as a benchmark for the subsequent assessment of the significance of the changes in conventional arms control in the last two decades.

### **2.3.a Control frames**

The way a problem is understood or framed influences the responses to the problem. The 1990 Treaty on Conventional Armed Forces in Europe is framed as a confidence building measure between states of two opposing military alliances. The treaty is not concerned with the potential impact of accumulations or exports of conventional arms in other parts in the world. Likewise the 1991 UN Conventional Arms Register is designed as a transparency and confidence measure between states at the global level. Other measures that were taken by a few states in the early 1990s focus less on confidence-building than on the impact of arms transfers abroad and, therefore, are framed very differently. The responses to the perceived problem, that is, undesirable impacts of arms transfers in other parts of the world, consequently do not focus on the reduction of conventional arms holdings but on minimum standards that states should respect in their arms transfer decisions. Examples are the *Guidelines for Conventional Arms Transfers* that the permanent members of the UN Security Council adopted in 1991 as well as common minimum export criteria that EU member states adopted in 1991/92 (see chapters three and five respectively).

The issue of small arms trafficking also highlights the impact of frames on proposed solutions. Greene holds that that “(t)he character ... of international initiatives to address illicit arms trafficking problems depends substantially on the way in which the issue is framed” (Greene, 2000, p. 156). Specifically, there exists by now a broadly shared awareness among states that illicit small arms, that is, small arms that have been

diverted from the legal sphere, can have disastrous effects in some parts of the world. From this recognition flows the basic norm that states should control small arms to prevent the negative affects associated with especially illicit small arms. The scope of norms that states should adopt however differs greatly with the way the issue is framed. There are at least three different frames through which the small arms issue can be addressed.

One possible frame provides a focus on the illicit small arms trade in the context of organised crime. Related, illicit small arms are an important factor in the context of ordinary crimes such as armed theft and homicide. Types of arms commonly used in organised and other armed crime include revolvers, semi-automatic handguns, and sub-machine guns, that is, types of small arms that are traded especially on commercial markets. Measures to combat the illicit trade in such small arms may include strengthened law enforcement cooperation and controls to combat the illicit manufacture, possession, and trade of small arms. A ‘crime frame’ limits the scope of specific control measures to only commercially traded small arms. It excludes ‘military’ small arms such as heavy machine guns or mortars. ‘Military’ small arms are predominantly traded on state actor markets. Control measures proposed under an exclusive crime frame would, therefore, not extend to small arms that are stockpiled or transferred by states.

A second frame for the small arms issue focuses on the illicit small arms trade in the context of armed conflict and regional stability. Armed insurgents and other irregular groups typically use ‘military’ small arms that were initially manufactured and traded by states in the legal sphere. The availability of illicit small arms fuels the ability of embargoed state and non-state actors to engage in and sustain armed conflict and may entail gross violations of international humanitarian law. Controls to combat the illicit

trade in military small arms may include measures to prevent small arms exports to embargoed actors or if they would have a destabilising impact on regional security. Controls may also include measures to combat diversions of small arms from state actor stockpiles and in the context of state-to-state transfers as well as the collection and destruction of illicit small arms in post-conflict situations. An ‘armed conflict’ frame for the small arms issue may complement law enforcement cooperation with governmental cooperation in areas considered as a matter of national sovereignty. Examples are possible common minimum standards on the national management of small arms stockpiles and small arms export policies.

A third possible frame for the small arms issue focuses less on the illicit trade in small arms than on the misuse of legal and illegal small arms in, for example, violations of human rights and international humanitarian law. The misuse of small arms by state and non-state actors may also undermine the rule of law and the prospects for sustainable development in developing states. Controls that flow from such a ‘humanitarian/human rights frame’ would include national regulations on small arms use by the police and military. Controls may extend to include measures to combat the proliferation and illicit trade in small arms inasmuch as illicit small arms fuel the ability of sanctioned state actors as well as of non-state actors to obtain and misuse the arms.

### **2.3.b Predictions on norm emergence**

A traditional approach to security studies does not preclude the emergence of norms. This is especially the case if the norms serve to reinforce national security. The norm that states should combat illicit small arms trafficking is a case in point. Illicit small arms that are trafficked and used in the context of organised crime undermine the monopoly of legal force within a state. Combating illicit small arms may help to

reinforce the control of the state over its territory. Similarly, collection programmes for illicit small arms in post-conflict situations or restrictions on small arms transfers to non-state groups such as insurgents may help to reinforce the authority of the state in its territory. At the same time, traditionalists may argue that norms are only likely to emerge in the security sphere if they do not conflict with interests of states in areas that are seen as national prerogatives. In addition, traditionalists may add that states are unlikely to adopt norms that would impose significant administrative burdens on their small arms control systems, thereby also conflicting with national interests. These caveats have implications for the types of norms traditionalists would expect to diffuse in the area of small arms control.

First, traditionalists would be open to the possible emergence of small arms norms that are embedded in an exclusive ‘crime frame’ to combat the diversion of small arms from commercial markets. Traditionalists would be open to the emergence of such norms to the degree to that they reinforce national sovereignty. Traditionalists would consider the emergence of norms that are embedded in an ‘armed conflict’ frame as less likely. This is because the scope of the norms may include small arms under state actor control and touch on national security interests. Traditionalists would consider unlikely the emergence of norms that are embedded in a ‘humanitarian/human rights frame’. This is because the scope of norms under such a frame would focus on state actor use of legally held small arms. The norms would therefore have the greatest potential to interfere with national security interests and constrain governmental autonomy in the use of arms under its control.

Related, traditionalists would predict that control norms are more likely to emerge if the scope of controlled equipment is restricted. The most restrictive focus limits itself to ‘civilian’ small arms such as revolvers, non- and semi-automatic pistols, and shotguns

for private use in sport shooting and hunting activities. A more comprehensive scope of equipment also includes ‘military’ small arms such as automatic pistols and assault rifles as well as light weapons such as heavy machine guns. The trade in and possession of military small arms is often restricted to state actors. Controls that cover such arms directly touch therefore on national security interests. An even more comprehensive scope of equipment also includes ammunition for small arms. Controls on ammunition for military small arms can be directly related to national security interests. This is because information about a state’s stockpiles of ammunition can provide strategic insights into the level of preparedness of armed forces to engage in and sustain a military campaign.

Second, traditionalists would be open to the emergence of control norms if they are little comprehensive. The range of subsidiary norms that flow from a basic norm partially depends on the frame within which the norms are embedded (see above). But there can exist differences in the comprehensiveness of subsidiary norms even within a given control frame. For example, relevant measures under an ‘armed conflict frame’ may be restricted to only controls on small arms in state actor stockpiles. A more comprehensive range may further include criteria states should respect when assessing small arms transfer applications. Any such criteria may constrain the flexibility of states to transfer small arms for political or economic benefit. This illustrates that a high degree of comprehensive in the range of subsidiary norms has a high potential to include norms that conflict with national interests. Traditionalists would therefore consider the emergence of highly comprehensive norms as less likely than norms that are little comprehensive.

Third, traditionalists would consider the emergence of little detailed norms more likely than the emergence of norms that are highly detailed. For example, a basic norm

that is not complemented with detailed subsidiary norms leaves states with the flexibility to only implement the measures they think most adequate. Specifications that detail individual control measures, such as the controls of traders or small arms stockpiles, limit the flexibility of states of how to deal with illicit small arms. Any such subsidiary norms may be further detailed. Similarly, a subsidiary norm on small arms stockpile controls may be detailed to include specific security and safety standards for the management of the stockpiles. Such specifications may not only conflict with established state practices, thereby limiting national flexibility and constraining national interests, they may also impose administrative burdens that may not be seen to be in the national interest.

Fourth, traditionalists would consider the emergence of little binding norms as more likely than the emergence of norms with a highly binding character. Norms that are stipulated in guidelines are of a recommendatory character and, therefore, the least constraining norms on states. Norms that are stipulated in politically binding instruments are more binding even though they still only express the intention of states to comply with the norms. In contrast, norms that have a legally binding character may oblige states to conform to them under national law and/or international treaty law. Legally binding norms are, therefore, the most constraining norms for states.

In summary, a traditional approach suggests that norms are more likely to emerge the less they constrain existing national practices and interests. That is, traditionalists may argue that norms are more likely to emerge if the norms are restricted in their scope and little comprehensive, detailed, and binding. In terms of the norm maturity model, traditionalists would argue that immature norms are more likely to emerge than mature norms. At the same time, a traditional approach need not preclude the emergence of, for example, legally binding norms in the security sphere. Traditionalists

may point out, however, that legally binding norms are more likely to emerge the less comprehensive and detailed they are. Conversely, traditionalists may argue that comprehensive and detailed norms are more likely to emerge the less binding they are.

Of further interest in this context are possible predictions that may be made in relation to the different levels at which norms are adopted. The UN may be considered as one of the most unlikely forums for the development of mature norms on conventional arms control. This is because the global membership of the UN generally entails the need to achieve consensus among states that sometimes have fundamentally different experiences in relation to their national security as well as views on what is and what is not an appropriate issue for discussion at the global level. Related, certain regions and sub-regions may provide a more difficult framework for the development of common norms on conventional arms control than others. To illustrate, the latent threat of war between Arab states and Iran on the one hand and Israel on the other would suggest that common control norms may be more difficult to achieve in the Middle East than in, for example, the context of the European Union.

### **2.3.c Predictions on non-governmental advocacy influence**

As with norms, a traditional approach to security studies does not preclude a possible role and influence of non-governmental advocacy actors in the field of conventional arms control. But traditionalists would make similar predictions about such a possible role and influence as they would make in relation to norms. That is, non-governmental advocacy actors would be expected to have a greater role and influence in areas that are of little consequence to national security interests than in those that may constrain national flexibility in the security sphere. Specifically, advocacy actors may be expected to be particularly prominent in areas where statesmen need only to pay lip-



service to what advocates promote and/or where such actors can be used instrumentally to further governmental aims. It would not be possible to speak of a significant role and influence of non-governmental advocacy actors in these cases.

Related, non-governmental advocacy actors may be expected to have a possible role and influence in the promotion and shaping of norms that are restricted in their scope and comprehensiveness as well as in their detail and binding character. Non-governmental advocacy actors would be considered unlikely to have a significant role and influence on the development of norms that have a broad scope and comprehensiveness as well as high levels of detail and binding character. In other words, non-governmental advocacy actors would be considered unlikely to have a significant role and impact on the development of mature norms on conventional arms control. This prediction would be made in particular the more the norm under consideration relates to national security interests and constrains the flexibility of states in the security sphere.

## **2.4 Use of terminology**

Some additional clarifications are required to facilitate the subsequent research. To restate, the principal aim of this research is to assess whether the traditional understanding of security governance or, more precisely, the governance of conventional arms control is challenged by the changes that took place in the last two decades. This traditional understanding is mostly influenced by realist approaches that, despite differences between them, share certain assumptions. This includes, as summarised by Terriff, that

“states are preoccupied with maintaining autonomy, fending off restrictions on their freedom of action, particularly with respect to ensuring their security. States want as much

freedom as possible to avoid being drawn into circumstances that could cause them great harm. They want as much freedom as possible to take actions necessary to keep safe. They suspect that collusion with others on these matters might be dangerous because those others will, out of a desire for autonomy, be reluctant to restrict their freedom of action sufficiently, especially in a crunch” (Terriff *et. al.*, 1999, p. 37)

Despite neo-liberal and other liberal-inspired criticisms of realist approaches, there is a quasi-consensus among the dominant international relations theories on the pertinence of certain realist arguments when it comes to the security sphere and conventional arms control. Specifically, it is the argument that states are unlikely to cooperate with each other and with non-governmental advocacy actors on more than a temporary and superficial level when it comes to their national security. Indeed, it may be argued that many of the alternative theories in international relations would possibly subscribe to this consensus as well. For example, feminist and neo-marxist approaches may challenge the ontological assumptions that underpin this consensus; feminists by pointing towards the dominance of masculinity and power in the discourse, neo-marxist by arguing that the debate should better be framed in the context of global capitalist structures and the exploitation of the less developed world. They do not, however, specifically address the interrelations between states, norms, and non-governmental advocacy actors in the field of conventional arms control in a way that would allow for the investigation of the continued relevance of the traditional views of security governance.

Further, the predictions about norms emergence and non-governmental advocacy influence that are elaborated in the preceding section are, admittedly, theoretical constructs. This is because there is little literature that comprehensively addresses the question of what the changes in conventional arms control would need to entail in order

to be considered a significant challenge to traditional views on security governance. Nevertheless, it should be noted that many of the predictions are frequently encountered among policy-makers and members of governmental delegations who participate in multilateral and national processes on the development of conventional arms control standards. Specifically, the predictions largely reflect what classical realists may term a 'common sense' understanding of what is and what is not likely in relation to conventional arms control. It is this traditionalist 'common sense' understanding that is under scrutiny and provides the background for this research on the significance of the changes in the field of conventional and small arms control in the last two decades.

### **Chapter 3: Multilateral norms on arms control**

The first of the two primary questions of this research project asks whether the conventional arms control norms that states adopted in the last two decades significantly constrain their flexibility and exclusivity in the security sphere. To answer, the project looks into the degree to which the issues on that states adopted norms relate to national security interests. The project also looks at the degree to which the internal characteristics of the norms relate to national security interests. As argued here, evidence for the emergence of norms that significantly constrain national flexibility may signal a greater willingness of states to cooperate on conventional arms control. Of further interest are the differences between the norms in the various multilateral settings as well as their continued development in some of these. The analysis of these differences and developments will assist in identifying the dynamics that underpinned the emergence and diffusion of the relevant norms.

Chapter three addresses the above question with respect to global, regional, and sub-regional norms on conventional arms and especially small arms. The relation between control norms on conventional arms and small arms is clarified in the following first section of the chapter. The chapter then turns to a comparative analysis of the relevant multilateral control instruments and considers how they frame the issues which are covered by them. The chapter subsequently turns to five case studies that provide a comparative analysis of the internal characteristics of selected multilateral norms. The question regarding the differences between developments in different multilateral settings is addressed where relevant in the discussion.

The chapter assumes the reader's familiarity with the relevant multilateral control instruments. The full names of the instruments are listed in the abbreviations preceding

chapter one. The full names as well as the contents of the individual instruments are further summarised in Annex A to this research.

### **3.1 Conventional and small arms control norms**

The changes that are the focus of this research project date back to the end of the Cold War and the early 1990s. The end of the superpower confrontation opened new space for international debates about security at especially the global level. An example is the creation of the 1991 UN Register on Conventional Arms that, as mentioned, aimed to promote transparency and confidence among states. A further example is the adoption of the 1991 UN Security Council Guidelines for Conventional Arms Transfers by the permanent members of the UN Security Council. The guidelines were partially inspired by the recognition of especially the Western members of the Security Council that poor coordination in arms export decisions had contributed to instability in the Middle East and the first Gulf War. It was the same recognition that sparked action among EU member states to consider the greater coordination of their national export policies in 1991/92 (see chapter five). Notably, none of these initiatives focused on small arms or raised them as an individual issue in the context of conventional arms control. Nevertheless, they legitimised multilateral discussions on conventional arms control and contributed to opening political space for the emergence of the issue of small arms control on multilateral agendas in the mid 1990s.

An often-cited catalyst for the emergence of the small arms issue is the 1995 statement by the UN Secretary General that it was small arms the UN was dealing with in the context of armed conflicts and killed “people in the hundreds of thousands” (UN General Assembly, 1995, para. 60). In parallel, the international community recognised that illicit small arms were fuelling armed banditry and crime and that their trafficking

was often linked to trafficking in drugs and other illicit goods. Durable, light in weight, and easy to use, illicit small arms became known as the ‘preferred tools of trade’ for armed non-state actors and as causing mass destruction. From the start, the small arms issue was linked, therefore, to humanitarian concerns. This linkage, or rather the acceptance thereof by states, was itself facilitated by the global momentum that was developing to counter the disastrous humanitarian consequences of anti-personnel landmines that remained a threat to innocent civilians long after conflicts had ended. The statement by the UN Secretary General prepared the ground for two groups of UN experts that considered the scope of the ‘small arms challenge’ and identified possible solutions thereto in 1997 and 1999 (UNGA, 1997 and 1999a).

Subsequent steps at the UN were further facilitated by especially two elements. The first of these was the consensus among many states that the issue of illicit small arms in the context of at least transnational organised crime required further action. Of note here is the adoption by American states of the 1997 OAS Firearms Convention that limits its scope to illicit small arms in the framework of combating organised crime (see below). As argued in chapter two, such a ‘crime’ frame is less intrusive in relation to national security interests than an ‘armed conflict’ frame. In some respects, the OAS Convention prepared the ground for the adoption of the 2001 UN Firearms Protocol that shares the frame and many norms of the OAS Convention (see below). In turn, the agreement between states to work on illicit small arms in the context of armed crime opened further space for and legitimised debates on illicit small arms in the context of armed conflict. It thereby also provided an additional entry point and contributed to legitimising the parallel discussions on the development of the 2001 UN Programme of Action on small arms.

Further, the linkage between the OAS Convention and the UN Firearms Protocol points towards the second element that facilitated developments at the UN level, that is, the adoption of regional and sub-regional agreements that influenced decisions taken at the UN. Specifically, states adopted various multilateral agreements on small arms with an ‘armed conflict’ frame prior to the negotiation of the UN Programme of Action. Examples are agreements within the OSCE, the then Organisation of African Unity, as well as in Eastern and Southern Africa. Again, the agreements legitimised the debates in the UN on addressing illicit small arms with a focus on their impact on armed conflict and provided norms that influenced those adopted in the UN Programme. The adoption of the UN Programme then also inspired the development of further agreements and the refinement of existing ones at various regional and sub-regional levels on small arms control in the early and mid 2000s.

Notably though, few states were also willing to discuss and develop controls on other categories of conventional arms. This is partially explained by the circumstance that ‘heavy’ equipment such as tanks and attack helicopters did not feature in the intra-state conflicts that were fought by irregular groups and were the focus of the 1995 statement by the UN Secretary General. Notwithstanding, poor controls and irresponsible transfer decisions on ‘heavy’ equipment also pose challenges. Nevertheless, while there have been adjustments to the UN Register on Conventional Arms, it was only within the EU and the Wassenaar Arrangement of arms exporting states that further norms were developed in the areas of arms transfers and transparency thereon since the early 1990s.

It was not until the mid 2000s that these developments started to be reflected at the global level with the decision by the UN General Assembly to mandate the creation of group of experts to consider the development of an international Arms Trade Treaty

that would focus on all conventional arms (UNGA, 2006). Such a treaty would not only seek to build confidence among states and increase transparency on arms transfer decisions but also contain clear stipulations on the responsibilities of states under international human rights and humanitarian law in their arms transfer decisions (see chapter four).

As shown then, there exist intricate links between developments in relation to conventional arms control and controls on the specific sub-category of small arms. It is for this reason that this chapter considers norms that relate to conventional arms as well as to only small arms. That is, while most of the relevant instruments that are reviewed below address only small arms or certain small arms categories, other instruments cover small arms as a category of conventional arms or focus on ‘heavy’ conventional arms. It is with this clarification that the following section will provide a comparative analysis of the norms that are contained in the relevant multilateral control instruments.

### **3.2 Multilateral instruments on small arms control**

States adopted a range of multilateral instruments on conventional and especially small arms control since the late 1990s. At the global level, the main instruments are the 2001 UN Firearms Protocol, the 2001 UN Programme of Action on small arms, and the 2005 International Tracing Instrument on small arms. Regional control instruments include the Bamako Declaration on small arms that states adopted in the Organisation of African Unity in 2000 and the Firearms Convention that states adopted in the Organisation of American States in 1997. Sub-regional instruments in the Great Lakes Region and Horn of Africa include the 2000 Nairobi Declaration on small arms, the 2004 Nairobi Protocol on small arms, and the 2005 Nairobi Best Practice Guidelines on small arms. In the Southern African Development Community (SADC), instruments



include the 2001 Firearms Declaration and the 2001 Firearms Protocol. In the Economic Community of Western African States (ECOWAS), states adopted the ECOWAS Convention on small arms in 2006. In the European Union (EU), relevant instruments include the 1997 EU Joint Action on small arms, the 1998 EU Code of Conduct on arms exports, the 2003 Common Position on arms brokering, and the 2008 Common Position on arms export controls. In the Organisation for Security and Cooperation in European (OSCE), relevant instruments include the 2000 OSCE Document on small arms and the 2003 OSCE Handbook of Best Practices on small arms. In the Wassenaar Arrangement, relevant instruments include the 2003 Elements on Brokering and the 2002 Best Practice Guide for small arms exports (see table one below).

The adoption of the instruments and of the norms contained in them represents a recognisable change in the field of arms control. There exist control norms now that, just like the policy issue of small arms, did not exist prior to the 1990s. The instruments testify to the claim that small arms norms emerged and, in terms of the norm life cycle model, cascaded through the international system. But what does this change reveal about changes in the willingness of states to cooperate with each other in the field of conventional arms control? Is there evidence that states are increasingly willing to cooperate with each other on issues that directly affect their national security interests? Traditionalists expect that states will restrict their cooperation to a minimum in relation to arms control. The emergence of small arms control norms may only have been possible because the adopted norms do not greatly constrain flexibility in the national control practices. A resultant expectation is that states limit their cooperation mainly to the combat of illicit small arms in the context of armed crime. Instruments and norms that are broader in their scope by also covering illicit small arms in the context of armed

conflict are considered less likely. They would also be expected to be of weak binding character and little specificity.

A more nuanced analysis is required to assess the significance of the emergence of the small arms issue and the norms that make up the normative cluster of small arms control. The following sub-section provides this analysis by contrasting traditionalist expectations against the frames and binding character of the adopted instruments as well as the types of norms contained therein. Tables one and two below provide an overview of relevant instruments and of the principal control norms contained therein.

Table one provides the abbreviations and full titles of the instruments as well as their date of adoption. It identifies for each of the instruments whether it is underpinned by an armed crime frame, by an armed conflict frame, or both. As argued in chapter two, a crime frame is the most restricted frame because it limits its focus to commercially traded small arms and excludes norms on state actor small arms. An instrument that covers small arms in the context of both armed conflict and crime is underpinned by a more comprehensive frame. Table one further identifies whether the instruments are legally binding and, therefore, are of a strong binding character, of a politically binding character, or, in its least binding form, of a recommendatory character. In addition, table one shows whether the scope of the equipment in the instruments is restricted to only small arms or certain types of small arms or also includes ammunition. The control frame, binding character, and controlled equipment of the instruments are among the elements that determine whether the instruments may be said to reflect an only superficial change. This could be the case if the instruments restrict their scope to only a crime frame and/or exclude ammunition and have a weak binding character. In contrast, more comprehensive frames and instruments of at least some binding

character may indicate a potentially more significant development in the cooperation between states in the field of conventional arms control.

Table two lists the distribution of principal small arms control norms in the relevant instruments. They are norms on transfer controls; brokering controls; tracing illicit small arms; stockpile controls and surplus disposal; and civilian small arms possession. As held in chapter two, traditionalists would expect norms that reinforce national sovereignty to be more likely to emerge than norms on issues that greatly constrain national flexibility. Resultant expectations are that states are more likely to cooperate in tracing illicit small arms in the context of combating armed crime than on controls on legal state-to-state transfers. States are more likely to adopt norms on civilian small arms possession than norms on stockpile controls and surplus destruction of state actor small arms. The distribution of the principal control norms further determines whether the adopted instruments reflect an only superficial change. This could be the case if the instruments only cover issues that reinforce national sovereignty by bolstering the state's monopoly over the use of force. Conversely, the presence of norms that directly touch on national security interests, such as norms on transfer controls and controls on state actor small arms may indicate a more significant change in the willingness of states to cooperate on conventional arms control

**Table 1: Major multilateral instruments on small arms control**

<b>Title of instrument</b>	<b>Control frame</b>	<b>Binding character</b>	<b>Controlled equipment</b>
<b>UN Firearms Protocol</b>			
<i>UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition</i> , June 2001	Armed crime	Legally binding	Small arms and ammunition
<b>UN Programme of Action</b>			
<i>UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects</i> , July 2001	Armed conflict and crime	Politically binding	Small arms
<b>International Tracing Instrument</b>			

<i>International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons</i> , December 2005	Armed conflict and crime	Politically binding	Small arms
<b>Bamako Declaration on Small Arms</b>			
<i>Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons</i> , December 2000	Armed conflict and crime	Politically binding	Small arms and ammunition
<b>OAS Firearms Convention</b>			
<i>Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials</i> , November 1997	Armed crime	Legally binding	Small arms and ammunition
<b>Nairobi Declaration</b>			
<i>Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa</i> , March 2000	Armed conflict and crime	Politically binding	Small arms
<b>Nairobi Protocol on Small Arms</b>			
<i>Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa</i> , April 2004	Armed conflict and crime	Legally binding	Small arms and ammunition
<b>Nairobi Best Practices on Small Arms</b>			
<i>Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons</i> , June 2005	Armed conflict and crime	Recommendatory	Small arms and ammunition
<b>SADC Firearms Declaration</b>			
<i>Southern African Development Community Declaration concerning Firearms</i> , March 2001	Armed conflict and crime	Politically binding	Small arms and ammunition
<b>SADC Firearms Protocol</b>			
<i>Protocol on Control of Firearms, Ammunition and other related materials in the Southern African Development Community Region</i> , August 2001	Armed conflict and crime	Legally binding	Small arms and ammunition
<b>ECOWAS Convention on Small Arms</b>			
<i>ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials</i> , June 2006	Armed conflict and crime	Legally binding	Small arms and ammunition
<b>EU Joint Action on small arms</b>			
<i>Joint Action on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons</i> , December 1998 and July 2002	Armed conflict	Legally binding	Military small arms (and ammunition Since 2002)
<b>OSCE Document on Small Arms</b>			
<i>OSCE Document on Small Arms and</i>	Armed conflict	Politically binding	Military small arms

<i>Light Weapons</i> , November 2000			
<b>OSCE Best Practices</b>			
<i>OSCE Handbook of Best Practices on Small Arms and Light Weapons</i> , December 2003	Armed conflict	Recommendatory	Military small arms
<b>Wassenaar Best Practices</b>			
<b>WA Initial Elements:</b> <i>Guidelines &amp; Procedures, including the Initial Elements</i> , 1996, as updated <b>WA Elements on Brokering:</b> <i>Elements for Effective Legislation on Arms Brokerage</i> , December 2003 <b>WA Best Practices for small arms exports:</b> <i>Best Practice Guide for Exports of Small Arms and Light Weapons</i> , December 2002	Armed conflict	Some politically binding, others recommendatory	Military small arms and ammunition

**Table 2: Distribution of principal control norms in multilateral instruments**

Instrument	Control areas covered in instruments					
	Transfer controls	Brokering controls	Tracing of illicit arms	State actor arms		Civilian possession
				Stockpile controls	Surplus disposal	
<b>UN Firearms Protocol</b>	---	Yes	Yes	---	---	---
<b>UN Programme of Action</b>	Yes	Yes	Yes	Yes	Yes	---
<b>UN Tracing Instrument</b>	---	---	Yes	---	---	---
<b>Bamako Declaration</b>	---	Yes	Yes	Yes	Yes	---
<b>OAS Firearms Convention</b>	---	Yes	Yes	---	---	---
<b>EU Joint Action</b>	Yes	---	---	Yes	Yes	---
<b>Nairobi Declaration</b>	---	Yes	---	---	---	Yes
<b>Nairobi Protocol</b>	---	Yes	Yes	Yes	Yes	Yes
<b>Nairobi Best Practices</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>SADC Declaration</b>	---	Yes	Yes	Yes	Yes	Yes
<b>SADC Firearms Protocol</b>	---	Yes	Yes	Yes	Yes	Yes
<b>ECOWAS Convention</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>OSCE Document</b>	Yes	Yes	Yes	Yes	Yes	---
<b>OSCE Best Practices</b>	Yes	Yes	Yes	Yes	Yes	---
<b>Wassenaar Arrangement</b>	Yes	Yes	---	---	---	---

### **3.2.a Comparative analysis of instruments**

There are various aspects of the instruments that reflect traditionalist expectations in relation to the frame and binding character of the instruments as well as to the types of norms contained therein. None of the instruments addresses the misuse of small arms by state actors and constrains national practices in relation to the use of small arms by state actors. Regional disparities exist in control agreements. States did not adopt major control instruments in the Middle East and South-East Asia. This reflects that states in these sub-regions do not consider the issue of illicit small arms as requiring the development of instruments that would complement their commitments under those in the UN instruments.

Other issues that reflect traditionalist expectations are the focus of the UN Firearms Programme and the OAS Convention. Both instruments address illicit small arms in the context of armed crime only. They can both be seen as the expression of interest among states to reinforce their national sovereignty by combating armed crime. Related, both instruments exclude norms on, for example, transfer criteria and controls on small arms in the hands of state actors. They are limited therefore in the degree to which they constrain national security interests. The restricted focus of these instruments may also explain why states agreed to adopt them as legally binding instruments. In addition, several instruments do not explicitly include ammunition in their scope and thereby exclude an issue often judged to touch on security sensitivities among states. Examples are the UN Programme and Tracing Instrument, the Nairobi Declaration, and the OSCE Document and Best Practices.

An interesting case is presented by norms on civilian small arms possession that, in a traditionalist perspective, are considered as an ‘easy’ case for norm emergence. This is because controls in this issue area can reinforce the authority of the state in its

territory. Norms on the control of civilian small arms possession are, however, only found in the sub-regional African instruments. This demonstrates that even norms that may be considered an easy case do not necessarily evolve in some multilateral settings.

Notwithstanding, the great majority of the instruments addresses illicit small arms in the context of armed crime *and* armed conflict or, in some cases, specifically focus on illicit small arms in the context of armed conflict. Examples of the latter case are the EU Joint Action, the OSCE Document and the OSCE and Wassenaar best practice guides. Related, most instruments include norms on controls of small arms that are held by state actors such as norms on stockpiles of state actor small arms. They contain norms therefore that directly touch on national flexibility in the security sphere by stipulating how states have to control the small arms in their possession. Further, about half of the instruments also make at least a reference to controls on transfers of small arms which, again, directly touches on national flexibility in relation to transfer decisions. Most of these instruments also include ammunition in their scope and, therefore, go further than what may have been expected.

While the scope and contents of these instruments are surprising from a traditionalist perspective, traditionalists may point out that many of the instruments are only politically binding. Examples are the UN Programme and Tracing Instrument, the Bamako Declaration, the Nairobi and SADC declarations, and the OSCE Document. Further, the Nairobi, the OSCE, and several of the Wassenaar best practice guides are even less constraining because of their recommendatory character. This demonstrates limits to the willingness of states to adopt norms that would legally commit them to implement the relevant norms in their domestic systems. Worth mentioning is the EU Joint Action in this context. The instrument is legally binding and makes a reference to norms on transfer controls as well as on stockpile controls and surplus disposal.

Notably though, the joint action only commits EU member states to “enhance efforts to build consensus in the relevant regional and international forums” on these norms (Council of the EU, 2002, art. 2). Again, this reflects the prediction that states are unlikely to adopt multilateral norms that are legally binding and that touch directly on their national security interests.

Nevertheless, the adoption of even only politically binding or recommendatory norms on issues such as stockpile controls is notable because of their direct relation to national security interests. In addition, a few instruments contradict traditionalist expectations altogether by focussing on small arms and ammunition in the context of armed crime *and* conflict, including norms on stockpile controls, and being legally binding. Examples are the Nairobi and SADC protocols as well as the ECOWAS Convention. In short then, the above analysis suggests that the emergence of especially small arms norms cannot be dismissed as insignificant for being restricted to issues falling outside national security interests. Traditionalists may have predicted the emergence of mainly norms pertaining to a crime frame and/or that are of little specificity and binding character. This prediction is contradicted by various instruments that address small arms in the context of armed conflict and include politically and, in some cases, legally binding norms on issues such as transfer controls and controls on state actor small arms.

The analysis of the instruments also suggests mutual influences and multilateral dynamics that shaped the emergence of norms and their internal characteristics. As argued previously, the 1997 OAS Firearms Convention, addressing small arms in the context of crime, provided a model for the 2001 UN Firearms Protocol that also addresses small arms in the context of crime. Similar regional and sub-regional



influences existed in relation to the negotiation of norms in the framework of the 2001 UN Programme of Action. States adopted several instruments in the months preceding the negotiations of the UN Programme. Examples are the Bamako, Nairobi, and SADC declarations as well as the OSCE Document. The instruments address small arms in an armed conflict frame and, in the case of the Bamako and SADC declarations and the OSCE Document, raise norms on the control of state actor small arms. EU states also committed to controls on state-to-state transfers of conventional arms in the 1998 EU Code of Conduct on arms exports and to promoting such controls in the EU Joint Action on small arms of the same year. The negotiations of the UN Programme did not take place, therefore, in a normative void. Rather, they could draw on already existing regional and sub-regional norms as possible models for global norms. In turn, the adoption of the UN Programme arguably spurred further action in at least some multilateral forums. An example is the 2004 Nairobi Protocol that includes norms on tracing illicit small arms as well as controls on state actor small arms. The protocol therewith includes norms that were adopted in the UN Programme but were not included in the preceding 2001 Nairobi Declaration.

Of related interest is the continued development of norms after their initial adoption. Examples are the development of norms in the International Tracing Instrument, the Nairobi and SADC protocols, as well as the Nairobi, OSCE, and Wassenaar best practice guides. There are three elements to the changes. One of them is the development of legally binding instruments that followed the prior adoption of politically binding instruments. Examples are the Nairobi and SADC protocols that followed the prior adoption of declarations in the same forums. The second element is the adoption of a more comprehensive range of norms within the instruments. This is the case in relation to the Nairobi Protocol that, in contrast to its preceding declaration,

also includes norms on tracing illicit small arms as well as norms on the control of state actor small arms. The Nairobi Best Practices further include norms on transfer controls. The third element is the increase in the level of detail of norms within a given issue area. One example is the International Tracing Instruments that elaborates and complements the norms on tracing illicit small arms in the UN Programme. As shown below, the Nairobi and SADC protocols also provide greater detail in norms than the preceding declarations. Likewise, the best practices that complement the OSCE Document and the Nairobi Protocol provide greater detail in their norms.

The continued development of norms in the relevant forums reflects the process referred to in chapter two, that is, the growing maturity of norms. That is, norms developed towards greater comprehensiveness, detail, and/or binding character in at least some forums. From a traditionalist perspective, the process is puzzling, especially because it cannot be argued that the continued development of norms took place only in issue areas that are of little consequence to state security interests. States are not expected to further develop initially adopted norms if they mainly seek to limit interference in their national practices and flexibility. In contrast, liberal-inspired theories offer possible explanations even if they are not generally applied to the analysis of changes in the security sphere. In terms of neo-liberal institutionalism, the continued development of the norms may be taken as an example of states overcoming transaction costs after the initial adoption of more basic instruments and norms. States became more open to deepening their cooperation once the initial costs in human and financial resources were overcome to establish a framework for such cooperation. Their repeated interaction in the small arms issue area facilitated the adoption of more mature norms. A functionalist spill-over effect may also contribute to explaining why states complemented already adopted norms with subsidiary norms of greater specificity.

In terms of social constructivism, the continued development of norms points towards a socialisation of states into the issue area of especially small arms control. States increasingly accepted the argument that excessive accumulations of illicit small arms and their illicit or uncontrolled trade has severe negative impacts on peace and stability. The argument was underpinned by the humanitarian concern expressed by the UN Secretary General in his 1995 reference to the 'hundreds of thousands' of innocent victims claimed each year by illicit small arms in armed conflicts (see above). The effective combat of illicit small arms requires the cooperation of states and the coordination of their national practices at multilateral levels. This requires that states adopt common norms in areas that they previously saw to be of exclusive national authority. The adoption and, in some cases, further development of norms in an issue area that touches on security sensitivities suggests therefore a change in state perceptions of the issues that should remain subject to exclusive national authority. Further, the continued development of norms suggests a learning process by states. They recognised that the previously adopted, less mature norms did not have negative and non-anticipated consequences. This opened space for the subsequent maturing of norms with the aim of strengthening common measures to combat illicit small arms.

In summary, this sub-section set out to provisionally answer the question whether the instruments and the types of norms that states adopted provide evidence for a significant change in the willingness of states to cooperate on security issues. Traditionalists may argue that the emergence of the control norms is a superficial phenomenon because the norms do not involve militarily sensitive issues. It was shown however that the instruments are not all restricted to framing the combat of illicit small arms as a crime issue only. Not all instruments exclude controls on state actor transfers

and stockpile controls. Rather, most instruments address illicit small arms in the context of both crime and armed conflict. They often also contain norms on transfer and stockpile controls, that is, norms that potentially constrain state flexibility in national transfer practices and stockpile controls. In addition, states continued to develop norms in their internal characteristics in several multilateral forums.

Traditionalists may justly point out that there remain limits to the willingness of states to adopt common norms on small arms control. The instruments all exclude norms to prevent the misuse of legal small arms in the hand of state actors. States in Middle East and South East Asia did not complement their global commitments with sub-regional instruments to combat illicit small arms in the context of armed conflict. The two global instruments that address illicit small arms in both crime and conflict, that is, the UN Programme and Tracing Instrument, are only politically binding as are the norms that states adopted in the framework of the Organisation of African Unity, the OSCE, and the Wassenaar Arrangement. Developments towards norms of greater maturity cannot therefore be generalised across multilateral forums. Highly detailed instruments such as the best practice guides that states adopted in various forums are only of a recommendatory nature.

Nevertheless, the traditional understanding of state behaviour in the security sphere cannot adequately account for the presence of sometimes legally binding norms in issue areas that directly relate to military sensitivities. It also cannot adequately explain the continued development of the norms in several forums. In contrast, neo-liberal institutionalism can partly account for the continued development of norms. But it does not address why states decided to cooperate on issues that were previously considered to fall under exclusive national authority. Social constructivism points to changes in the national security perceptions of states in this context. Specifically, states changed their

views of the acceptable subjects for multilateral cooperation. This included their acceptance that multilateral norms on issues including transfer and stockpile controls were required to address the humanitarian impact and other negative effects associated with especially illicit small arms.

As shown then, the degree to which issues on which states adopted norms relate to national security interests is not insignificant. Many of the instruments contain norms in issue areas that touch on military sensitivities. In consequence, this sub-section provides preliminary evidence for an answer to the primary research question on norms. That is, there is evidence for the existence of norms that have the potential to significantly constrain state flexibility and exclusive national authority in the security sphere. Whether the norms actually constrain national flexibility in issues that touch on military sensitivities remains to be determined. The norms may be vaguely worded and amount to little more than declarations of intent by states. Or they may impose comprehensive, detailed, and legally binding obligations on states. Further research is also required to explore the differences in multilateral norms within the same control issue. The following sub-section turns to these questions.

### **3.3 Maturity of selected norms**

An assessment of the degree to which multilateral norms relate to national security interests requires not only the identification of the issues the norms address but also of their internal characteristics. Norms may be based on only vague commitments and be of little comprehensiveness, detail, and binding character. Such norms of little maturity leave considerable flexibility for states in how to implement the norms. Conversely, mature norms may impose legally binding obligations that are highly comprehensive and detailed and therewith directly interfere with national security interests. A

traditionalist approach suggests that states are unlikely to adopt mature control norms in areas directly affecting national interests.

The following case studies consider the levels of maturity of selected control norms in light of this approach. The investigated norms are norms on tracing illicit small arms, brokering controls, stockpile controls, transfer criteria, and transparency on transfers. Each of these issues relates differently to national security interests (see above). Further differences may exist in the internal characteristics in the normative clusters in each of these issue area in the various multilateral settings.

### **3.3.a Norms on tracing illicit small arms**

One of the principal subsidiaries to the norm that states should combat illicit small arms is the norm that states should cooperate in tracing small arms that are recovered from the illicit sphere. The tracing of small arms starts with the identification of the model, type, and calibre of the small arm as well as of its serial number, manufacturer's mark and/or mark of country of manufacture and other relevant markings. If produced abroad, national authorities may request information from the foreign producer about previous legal transfers of the small arms so as to identify the point of the small arm's diversion into the illicit sphere. This then can help to hold to account the actors responsible for the diversion and prevent future diversions by these actors. Tracing illicit small arms, and cross-border cooperation on reconstituting the legal trade chain of a recovered arm, is an established practice among at least Western law enforcement circles.<sup>4</sup> As a crime control measure, it assists in the identification and prosecution of for example private firearms dealers who supply foreign produced small arms to domestic criminals and criminal organisations. It can thereby contribute to

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<sup>4</sup> The observation is based on author's work experience and professional exchanges with European, North American, and sub-Saharan African law enforcement officials.

consolidating a state's sovereignty and monopoly over the use of armed force in its territory. It also need not conflict with military sensitivities if it pertains to only commercially manufactured and traded small arms and allows states to retain a certain level of secrecy in relation to markings (see below).

Normative entrepreneurs consistently advocated the extension of tracing norms to illicit small arms found in the context of armed conflict (see chapter four). Investigative reports by UN panels on UN arms embargo violations in the late 1990s / early 2000s as well as by non-governmental researchers on illicit small arms flows to non-state actors in intra- and cross state conflicts supported the efforts of advocates. Tracing conflict arms can be more intrusive into national sovereignty and secrecy on domestic small arms production, holdings, and transfers. Illicit small arms used in the context of armed conflict are predominantly military small arms that originate from state actor markets and holdings. Cooperation in tracing such small arms may lead to situations in which a state is asked to reveal militarily sensitive and/or politically embarrassing information. A state may be asked to reveal information about its arms supplies to political clients abroad. It may also be forced to admit that small arms were diverted from its authority with the help of corrupt officials and/or poor stockpile controls. Markings that easily identify the serial number, year of production, and manufacturer may reveal the annual output of the manufacturer and, by implication, reveal sensitive military information about domestic production capacities of military small arms.

A deeper analysis is required to determine the degree to which the norms that states adopted on tracing illicit small arms actually affect national security interest. First, the structure of the normative cluster making up the issue area of tracing illicit small arms needs to be clarified. Second, the distribution of the subsidiaries must be identified in the relevant multilateral instruments. The presence of the subsidiaries determines the

levels of comprehensiveness and detail (in short: level of specificity) of the norms. The levels of specificity and binding character of the norms define their levels of maturity. As argued in chapter two, traditionalists are sceptical towards the emergence of mature norms that constrain state flexibility in the security sphere. They would be sceptical towards the emergence of mature norms on tracing illicit small arms that contain a comprehensive range of detailed subsidiary norms of a highly binding character in areas touching on military or political sensitivities. Contrasting the maturity of norms on tracing against traditionalist expectations allows for an assessment of the degree to which these expectations are met. The following sub-section provides an oversight of the normative cluster on tracing. It then turns to the distribution of principal subsidiary norms and the levels of maturity of the tracing norms in multilateral instruments.

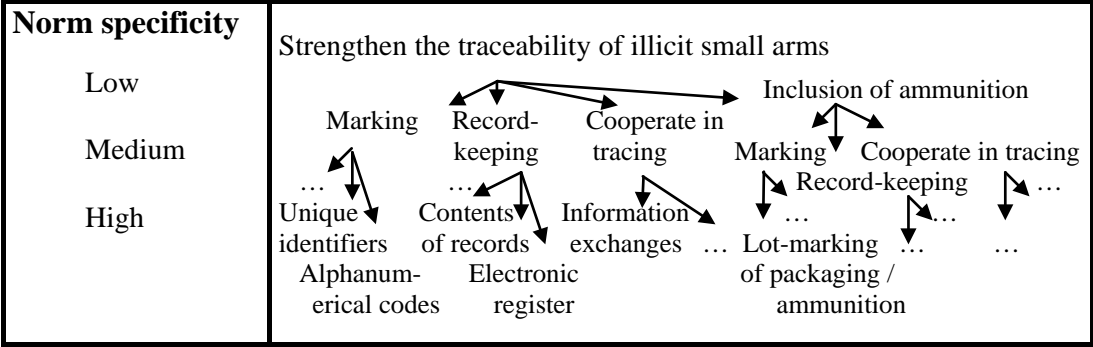
#### *3.3.a.1 Structure, distribution, and maturity*

Figure four below presents an overview of the cluster of norms that constitute the issue area of tracing illicit small arms. It also shows possible levels of specificity within such as cluster as determined by the presence, range, and detail of subsidiary norms. The basic norm that underpins the tracing issue is that states should strengthen their capacities to trace the points of origin and diversion of small arms that are recovered from the illicit sphere. An instrument that restricts itself to only stipulating this basic norm would contain a low level of specificity in its tracing norms. Subsidiary norms that define the level of comprehensiveness are that states should adequately mark small arms, keep accurate records on production, holdings, and transfers, and cooperate in tracing illicit small arms. A further possible subsidiary is the tracing of illicit small arms ammunition. An instrument containing most or all of these principal subsidiaries would contain a medium level of specificity in its tracing norms. The subsidiaries may



vary in their levels of detail. Marking standards may specify that small arms have to be marked with unique identifiers and in alphanumerical codes. Record-keeping standards may specify the contents of the records to be kept and recommend the establishment of electronic registers. Cooperation standards may detail how to conduct information exchanges in the framework of tracing illicit small arms. Standards on tracing illicit ammunition may be detailed to include the marking of ammunition with lot-numbers and other information and whether the markings should be applied to the packaging and/or the ammunition itself. An instrument with a comprehensive range of highly detailed subsidiaries would contain a high level of specificity in its tracing norms.

**Figure 4: The normative cluster of tracing small arms**



Tables three and four below present an overview of the distribution of subsidiary norms on marking, record-keeping, and cooperation in tracing illicit small arms in multilateral instruments. Table three focuses on subsidiary norms on marking small arms and identifies the distribution of principal elements of marking norms. The elements are specifications on the contents of marking, the placing of markings, and the point at which the marking should be done. The point of marking may include the points of manufacture, import, sale from government stocks, and recovery from the illicit sphere and also include small arms already in government stocks.

Table four focuses on the distribution of principal elements detailing subsidiary norms on record-keeping and cooperation in tracing. In respect to record-keeping, the

elements are specifications of the content of records, the minimum time limits for record-keeping, and whether the registers should be centralised and kept in electronic format. In respect to cooperation, the elements are specifications of the contents of information in tracing requests, the modalities of initiating and responding to tracing requests, and the cooperation with multilateral organisations.

**Table 3: Subsidiary norms on marking small arms**

Instrument	Contents of marks	Placing of marks	Point of marking				
			Manu- facture	Import	Stock- piles	Stock Sales	Recov- ery
UN Firearms Protocol	Yes	---	Yes	Yes	---	Yes	Yes
UN Programme of Action	Yes	---	Yes	---	---	---	Yes
Int. Tracing Instrument	Yes	Yes	Yes	Yes	Yes	Yes	Yes
OAS Firearms Convention	Yes	---	Yes	Yes	---	---	Yes
Nairobi Protocol	Yes	Yes	Yes	Yes	Yes	---	---
Nairobi Best Practices	Yes	Yes	Yes	Yes	Yes	---	---
SADC Firearms Protocol	Yes	Yes	Yes	---	---	---	---
ECOWAS Convention	Yes	Yes	Yes	Yes	---	---	Yes
OSCE Document	Yes	---	Yes	---	---	---	Yes
OSCE Best Practices	Yes	Yes	Yes	Yes	---	---	---

**Table 4: Subsidiary norms on record-keeping & tracing cooperation**

Instrument	Record-keeping			Cooperation in tracing		
	Specifica- tion of contents of records	Minimum time limit for record- keeping	Electron- ic & cen- tralised records	Informa- tion in tracing request	Modalities of tracing requests	Cooperation with multilateral organisations
UN Firearms Protocol	---	Yes	---	---	---	---
UN Programme of Action	---	---	---	---	---	Yes
Int. Tracing Instrument	---	Yes	---	Yes	Yes	Yes
OAS Firearms Convention	---	---	---	---	---	---
Nairobi Protocol	---	Yes	---	---	---	---
Nairobi Best Practices	Yes	---	Yes	Yes	Yes	Yes
SADC Firearms Protocol	---	---	Yes	---	---	---

<b>ECOWAS Convention</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>OSCE Document</b>	---	---	---	---	---	Yes
<b>OSCE Best Practices</b>	Yes	Yes	---	Yes	Yes	Yes

Table five presents an overview of the levels of detail of the subsidiary norms on marking, record-keeping, and cooperation in tracing in multilateral instruments as well as the resultant overall level of detail of tracing norms in the instruments. The levels of detail in the subsidiaries are determined by the presence of the principal elements detailing the subsidiaries. Instruments that contain none or only few of the elements have a low level of detail in their tracing norms. Instruments containing some of the elements or most or all of the elements have a medium and high level of detail respectively in their tracing norms.

Table six presents an overview of the different levels of comprehensiveness, detail, and binding character as well as the resultant levels of maturity of tracing norms in multilateral instruments. To recall, an instrument contains a low level of comprehensiveness if it only stipulates a basic norm on tracing. It contains a medium level of comprehensiveness in its subsidiary norms if it raises marking, record-keeping, and tracing standards. It contains a high level of comprehensiveness if it fully integrates ammunition into the marking, record-keeping, and cooperation in tracing standards. The levels of detail of the norms is identified in table five above, their levels of binding character can be inferred from table one.

The resultant levels of maturity of tracing norms are determined by the levels of comprehensiveness, detail, and binding character of the norms. A low level of maturity exists if two or more of the three norm internal characteristics, that is, comprehensiveness, detail, and binding character, are of a low level. Medium and high

levels of maturity exist if two or more of the three characteristics are of a medium or high level respectively.

**Table 5: Level of detail of subsidiary norms on tracing small arms**

<b>Instrument</b>	<b>Marking</b>	<b>Record-keeping</b>	<b>Cooperation In Tracing</b>	<b>Level of detail</b>
<b>UN Firearms Protocol</b>	Medium	Low	Low	<b>Low</b>
<b>UN Programme of Action</b>	Low	Low	Low	<b>Low</b>
<b>Int. Tracing Instrument</b>	High	Low	High	<b>Medium</b>
<b>OAS Firearms Convention</b>	Medium	Low	Low	<b>Low</b>
<b>Nairobi Protocol</b>	Medium	Low	Low	<b>Low</b>
<b>Nairobi Best Practices</b>	Medium	Medium	High	<b>Medium</b>
<b>SADC Firearms Protocol</b>	Low	Low	Low	<b>Low</b>
<b>ECOWAS Convention</b>	Medium	High	High	<b>High</b>
<b>OSCE Document</b>	Low	Low	Low	<b>Low</b>
<b>OSCE Best Practices</b>	Medium	Medium	High	<b>Medium</b>

**Table 6: Maturity of multilateral norms on tracing small arms**

<b>Instrument</b>	<b>Norm specificity</b>		<b>Binding Character</b>	<b>Norm maturity</b>
	<i>Comprehensiveness</i>	<i>Detail</i>		
<b>UN Firearms Protocol</b>	Medium	Low	High	<b>Medium</b>
<b>UN Programme of Action</b>	Medium	Low	Medium	<b>Medium</b>
<b>Int. Tracing Instrument</b>	Medium	Medium	Medium	<b>Medium</b>
<b>OAS Firearms Convention</b>	Medium	Low	High	<b>Medium</b>
<b>Nairobi Protocol</b>	Medium	Low	High	<b>Medium</b>
<b>Nairobi Best Practices</b>	Medium	Medium	Low	<b>Medium</b>
<b>SADC Firearms Protocol</b>	Medium	Low	High	<b>Medium</b>
<b>ECOWAS Convention</b>	High	High	High	<b>High</b>
<b>OSCE Document</b>	Medium	Low	Medium	<b>Medium</b>
<b>OSCE Best Practices</b>	Medium	Medium	Low	<b>Medium</b>

### *3.3.a.2 Comparative analysis*

The analysis of multilateral norms on tracing illicit small arms reveals that most of the instruments contain norms that, despite differences in their internal characteristics, are of medium maturity. This reflects traditionalists' predictions inasmuch as they would consider the emergence of highly mature norms as unlikely in the field of conventional arms control. In addition, there are various other examples that demonstrate the continued existence of limits to the willingness of states to cooperate with each other on small arms issues. Tracing norms in the UN Firearms Protocol and the OAS Convention are legally binding. But the two instruments address small arms tracing in an exclusive crime frame, are limited in their detail, and exclude ammunition-specific tracing standards. Indeed, the only instrument containing ammunition-specific tracing standards as well as having a high level of detail and binding character in its tracing norms is the EOCWAS Convention. It is the only instrument that contains tracing norms of a high level of maturity. The general absence of ammunition-specific tracing standards is explainable from a traditionalist perspective. First, tracing standards on ammunition may entail greater transparency on domestic production capacities and therewith conflict with military sensitivities as well as reveal clandestine state support to armed non-state actors. Second, marking and keeping records on ammunition to allow for tracing operations would involve significant financial and operative costs. It would require changes in production and management procedures of especially ammunition that is traded on civilian markets (Anders, 2005).

Further, all instruments promote the marking of small arms at the point of manufacture with a unique marking that identifies the country of manufacture (see table three) and, at a minimum, allows the authorities of that state to identify the manufacturer and the serial number of the small arm. Restricting the identification of

the manufacturer and serial number to only national authorities allows a state to keep a certain level of secrecy about its domestic production capacities. The restriction is achieved by using geometrical symbols together with alphanumerical codes as opposed to alphanumerical codes only. That is, alphanumerical codes can identify the manufacturer, year of production, and serial numbers of small arms produced by that manufacturer within a given year. Such information provides information about domestic production capacities and is seen as sensitive information. The exclusive use of alphanumerical codes may reveal such information to foreign states and, as traditionalists may predict, is unlikely to be adopted as a multilateral standard. The prediction is largely borne out because none except one of the instruments specifies the exclusive use of alphanumerical codes. This leaves the possibility for states to mark small arms in a way that protects potentially sensitive information. The one exception is, again, the ECOWAS Convention. The convention specifies that markings must be alphanumerical and also have to be applied to ammunition and its packaging (ECOWAS, 2006, art 18, 2.a and 3.a).

Of further note are the elements that specify the marking of inadequately marked small arms held in government stockpiles and/or sold from government stockpiles to permanent civilian use. The norms apply to state-held small arms and, if small arms already in stockpiles have to be remarked, may involve significant economic costs. It is not surprising from a traditionalist perspective therefore that only few instruments explicitly raise the marking of small arms in government stocks or when transferring them to civilian use. The instruments are the UN Firearms Protocol, the International Tracing Instrument, and the Nairobi Protocol and Best Practices. Similarly, few instruments specify the contents of records that are to be kept for tracing purposes and less than half of the instruments define information requirements and modalities of

tracing operations (see table four). States are not obliged to share sensitive information about state-to-state transfers of small arms. The modalities of tracing operations, even where defined, mostly allow states to maintain a level of secrecy. The Nairobi and the OSCE Best Practices stipulate that states should guarantee the confidentiality of information that is exchanged as part of tracing operations. They further stipulate that states maintain the right to restrict the use of information they may provide (Nairobi Best Practices, 2005, p. 28-29; and OSCE, 2003, p. 28). The International Tracing Instrument stipulates the confidentiality of information exchanged in tracing operations and the right of states to restrict information they provide for, *inter alia*, reasons of national security (UNGA, 2005a, art.15.a-c and 22).

Traditionalists would consequently be correct in pointing towards continuing limits in the willingness of states to cooperate in the area of tracing illicit small arms. States often did not establish consensus on elements that touch on security sensitivities or may require significant changes in their national production and management practices. Examples are the inclusion of ammunition-specific tracing standards; the exclusive use of alphanumerical codes; standards on marking small arms already in stockpiles and/or sold from these; or a legally binding obligation to respond to tracing requests by other states. States often did not find an agreement that these elements are acceptable limitations on national flexibility. Likewise, the methods for record-keeping and structure of national tracing systems are explicitly reaffirmed as national prerogatives in the International Tracing Instrument (UNGA, 2005a, arts. 11 and 14).

Nevertheless, a traditionalist account cannot fully account for the emergence of tracing norms. Moreover, the internal characteristics of the tracing norms that states adopted cannot, despite their limits, be rejected as superficial and as not affecting national

security interests. First, most multilateral norms on tracing that states adopted pertain to illicit small arms in both armed crime and conflict. The norms on ‘conflict tracing’ are often only politically binding or of a recommendatory character. But their presence in multilateral instruments is already notable. They extend a crime prevention measure used in relation to commercially traded small arms to efforts to combat illicit small arms that originated from state controlled production, holdings, and transfers. States agreed therefore to broaden the scope of issues relating to state-owned small arms acceptable for multilateral cooperation. Another example of this broadened scope of issues is the adoption by states of the element of import marking in most instruments (see table three). Marking small arms with an identification of the country of import can involve additional costs, especially if the small arms are marked after their production. It is not an established practice in relation to small arms traded on state-actor markets. Likewise, states agreed to the marking of small arms already in government stockpiles in the International Tracing Instrument, an element that was not included in the UN Programme negotiated four years previously.

Second, the levels of detail and binding character of norms in at least some instruments are not easily explained by or contradict traditionalist expectations. Although the overall level of detail in multilateral tracing norms is often limited, several instruments are highly detailed in specific subsidiary norms. Examples are the high levels of detail in subsidiary norms on marking and/or cooperation in tracing of state actor small arms in the International Tracing Instrument, the ECOWAS Convention, and the Nairobi and OSCE best practices. Tracing norms on state-owned small arms are of a legal and therefore highly binding character in the Nairobi and SADC protocols as well as the ECOWAS Convention (see tables five and six). As mentioned, the ECOWAS Convention also contains tracing norms that are of an overall



high level of maturity. The examples demonstrate that at least some instruments contain tracing norms with levels of comprehensiveness, detail, and binding character that go further than what traditionalists may have predicted. States accepted more than just insignificant costs and constraints on national flexibility to enhance the traceability of state-owned small arms.

Third, traditionalists cannot adequately explain the continued development in internal characteristics of tracing norms that directly touch on national security interests. In several instances, norms developed towards greater specificity after the initial cascading of more limited norms before 2003. The developments included dynamics both within and between multilateral forums. The 2003 OSCE Best Practices introduce a range of elements that are not found in the OSCE Document that was adopted three years previously. The elements include a definition of possible information contents and tracing modalities. They subsequently cascaded with their adoption in the 2005 Tracing Instrument, the 2005 Nairobi Best Practices, and the 2006 ECOWAS Convention. Another example is the element of marking small arms in state actor stockpiles, first adopted in the 2004 Nairobi Protocol. It was then also adopted in the International Tracing Instrument and further developed in the Nairobi Best Practices one year later (see tables three and four). As is the case with the OSCE Best Practices, the International Tracing Instrument and Nairobi Best Practices provide greater specificity in tracing norms than their preceding instruments by including these different elements.

In summary, there remain clear limits to the willingness of states to cooperate with each other in the field of tracing illicit small arms. Notwithstanding, the degree to which national security interests are affected by the internal characteristics of tracing norms is

not altogether superficial. Rather, states adopted subsidiary norms of which the specificity and in some cases also the binding character go further than what traditionalists may have anticipated. Most multilateral tracing norms extend to state-owned small arms and contain subsidiaries that touch on military sensitivities and constrain national flexibility to at least some extent.

The continued development of internal norm characteristics after the initial adoption of more limited norms in relation to state-owned small arms is particularly noteworthy. Neo-liberal institutionalism, if extended to the security sphere, may explain this development as another example of states overcoming the resource costs of identifying and developing common responses to a shared problem. The initial adoption of more limited norms provided a framework for cooperative efforts to build on and refine these norms with the aim to maximise their potential contribution to the combat of illicit small arms.

Social constructivism points towards incremental changes in the understanding of states of the issues considered to be acceptable for multilateral cooperation. It also points towards a learning process among states about the various elements required for effective tracing. States overcame initial fears that some of these later adopted elements may impose unacceptable constraints on national flexibility in the security sphere (see also chapter four).

### **3.3.b Norms on brokering controls**

Brokering controls are a clearly distinguishable policy issue on multilateral agendas in the fields of both conventional arms control and small arms control. The term ‘brokering’ broadly refers to the activity of mediating and/or arranging arms transfers without the arms necessarily entering into the ownership of the broker. The use of

brokers to identify buyers or sellers and to facilitate arms transfer negotiations are established practices in the arms trade. It was in the late 1990s that research repeatedly demonstrated that individual brokers were key actors in illicit supply chains of conventional arms and of small arms to regions in conflict and embargoed actors (see chapter four). There was also a growing awareness that only few states had controls in place that explicitly cover brokering activities. Especially, few states had controls in place to control brokering activities in relation to arms transfers between clients in two foreign states. Brokers involved in illicit deals between foreign buyers and sellers benefit from this loophole by avoiding being held to account in their state of operation.

Establishing national control systems on brokering activities does not touch on military sensitivities as long as states are not constrained in their use of brokers for legal imports and exports. But the establishment and maintenance of control systems may entail important administrative costs. This is the case particularly if controls are extended to brokers operating from abroad as well as to actors who provide ‘brokering-related’ activities such as shipping and financial services for arms transfers. A closer analysis is required to determine the degree to which the norms that states adopted on brokering controls affect national interests. The following sub-section provides an overview of the normative cluster on brokering controls and the distribution of subsidiary norms in the relevant multilateral instruments. The research then turns to a comparative analysis of multilateral norms on brokering controls.

### *3.3.b.1 Structure, distribution, and maturity*

Figure five below illustrates the cluster and specificity of norms that make up the issue area of brokering controls. The basic norm that underpins the brokering issue is that states should control the activity of individuals and entities that facilitate arms transfers

between buyers and sellers in foreign countries. The comprehensiveness of the cluster is defined by the scope of the controls. Controls may pertain to either all types of conventional arms or be limited to only small arms. Further, controls may be restricted to ‘core-brokering’ activities such as contract mediation or extend to include ‘brokering-related’ activities such as transportation and financing arms transfers. They may also extend to the activities by brokers who operate from abroad (extraterritorial controls). Elements that detail the specific measures states should take to control brokering include the licensing of brokering activities, the criteria to be used in licensing, and the registration of brokers. An instrument that restricts itself to only stipulating that states should control brokers without further specifying the measures states should take towards this end contains brokering norms of a low specificity. In contrast, an instrument containing a comprehensive scope and highly detailed specifications contains brokering norms of a high specificity.

**Figure 5: The normative cluster of brokering controls**

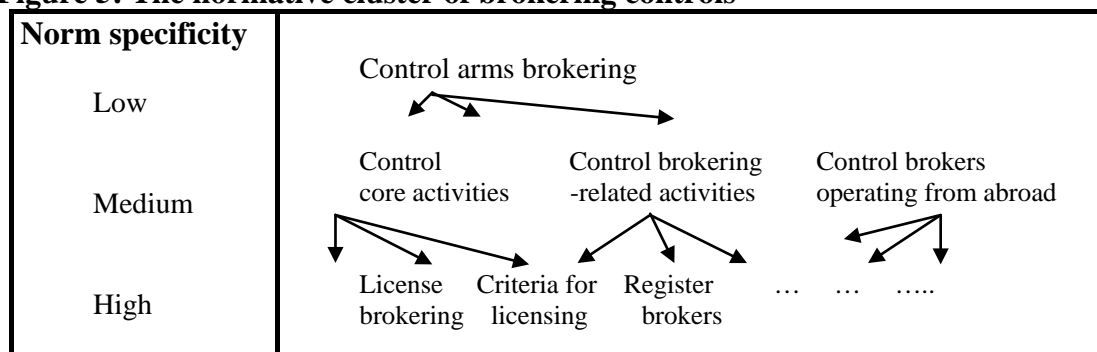


Table seven shows the distribution of subsidiary norms and specifications on brokering controls in multilateral instruments that raise the issue of brokering controls. The subsidiary norms defining the levels of comprehensiveness are the control of brokering activities, brokering-related activities, and of brokers operating from abroad. The elements defining the level of detail are the licensing of brokers, the stipulation of criteria for licensing brokers, and the registration of brokers.

Table eight identifies the maturity of multilateral brokering norms. Instruments containing low levels of comprehensiveness in their brokering controls are those that restrict their scope of controls to only core brokering activities. Instruments with medium and high levels of comprehensiveness in their brokering norms are those that extend their scope to brokering-related activities and to brokers operating from abroad respectively. Instruments that do not further specify the measures states should take to control brokering activities contain a low level of detail in their brokering norms; those that raise the licensing and registration of brokers contain medium levels of detail; and those that also provide licensing criteria contain high levels of detail. Further, table eight presents the levels of binding character of the norms as well as their resultant levels of maturity.

**Table 7: Distribution of brokering controls in multilateral instruments**

<b>Instrument</b>	<i>Comprehensiveness</i>			<i>Detail</i>		
	Brokering activities	Brokering-related activities	Brokers operating abroad	Licensing of brokers	Licensing criteria	Registration of brokers
<b>UN Firearms Protocol</b>	Yes	---	---	Yes	---	Yes
<b>UN Programme of Action</b>	Yes	---	---	Yes	---	Yes
<b>Bamako Declaration</b>	Yes	Yes	---	---	---	---
<b>OAS Convention</b>	Yes	Yes	---	---	---	---
<b>OAS Model Regulations</b>	Yes	Yes	---	Yes	---	Yes
<b>EU Guidelines</b>	Yes	---	---	Yes	Yes	Yes
<b>EU Common Position</b>	Yes	---	Yes	Yes	Yes	Yes
<b>Nairobi Protocol</b>	Yes	Yes	---	Yes	---	Yes
<b>Nairobi Best Practices</b>	Yes	Yes	---	Yes	Yes	Yes
<b>SADC Firearms Protocol</b>	Yes	---	---	---	---	---
<b>ECOWAS Convention</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>OSCE Document</b>	Yes	---	---	Yes	Yes	Yes
<b>OSCE Best Practices</b>	Yes	Yes	Yes	Yes	Yes	Yes

<b>WA Elements + Best Practices</b>	Yes	---	Yes	Yes	Yes	Yes
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**Table 8: Maturity of multilateral norms on brokering controls**

<b>Instrument</b>	<b>Norm specificity</b>		<b>Binding character</b>	<b>Norm maturity</b>
	<i>Comprehensiveness</i>	<i>Detail</i>		
<b>UN Firearms Protocol</b>	Low	Medium	Low	<b>Low</b>
<b>UN Programme of Action</b>	Low	Medium	Medium	<b>Medium</b>
<b>Bamako Declaration</b>	Medium	Low	Low	<b>Low</b>
<b>OAS Convention</b>	Medium	Low	Low	<b>Low</b>
<b>OAS Model Regulations</b>	Medium	Medium	Low	<b>Medium</b>
<b>EU Guidelines</b>	Low	High	Low	<b>Medium</b>
<b>EU Common Position</b>	Medium	High	High	<b>High</b>
<b>Nairobi Protocol</b>	Medium	Medium	High	<b>Medium</b>
<b>Nairobi Best Practices</b>	Medium	High	Low	<b>Medium</b>
<b>SADC Firearms Protocol</b>	Low	Low	High	<b>Medium</b>
<b>ECOWAS Convention</b>	High	High	High	<b>High</b>
<b>OSCE Document</b>	Low	High	Low	<b>Medium</b>
<b>OSCE Best Practices</b>	High	High	Low	<b>Medium</b>
<b>Wassenaar Elements on Brokering</b>	Medium	High	Medium	<b>Medium</b>

### *3.3.b.2 Comparative analysis*

Traditionalist predictions about the development of brokering norms are borne out in some respects. Normative entrepreneurs called for the development of global brokering norms since the late 1990s. The norms raised in the 2001 UN Firearms Protocol and Programme of Action are less comprehensive and detailed than what entrepreneurs called for but nevertheless reflect a partial advocacy success of the entrepreneurs (see chapter four). States also agreed to further consider the question of brokering controls in the UN Programme. This was a compromise between those states that called for more developed brokering norms and those that were unconvinced about the need for

such developments. In contrast to the tracing issue though, states have not further developed global brokering norms after their initial adoption in 2001. Various states remain unconvinced about the need to change their national control systems and/or are not prepared to incur the administrative costs associated with the introduction of brokering controls (Anders, 2004). The limits to the willingness of states to adopt controls that incur administrative costs are also illustrated by the low to medium levels of maturity of brokering norms in most of the relevant instruments.

Specifically, all of the instruments reviewed here refer to the control of core brokering activities. But only half of them raise the control of brokering-related activities and only a third raise controls on brokers operating from abroad. The SADC Firearms Protocol and the Bamako Declaration raise controls on brokering activities but fail to stipulate the measures states should take in order to control such activities. The OAS Firearms Convention stipulates that states shall criminalise the participation in as well as aiding, abetting, and facilitating illicit small arms trafficking (OAS, 1997, art. IV.1-2). It does not however stipulate more specific measures in relation to brokering and brokering-related controls. While the majority of instruments refer to the licensing and registration of brokers, only half of them also link the licensing to criteria that states should use in their assessment of brokering license applications.

Further, most of the norms are established in instruments that are of only a politically binding or recommendatory character and/or are formulated as recommendations. An example is given in the UN Firearms Protocol. While legally binding, the protocol stipulates that states “shall consider” establishing brokering controls (UNGA, 2001a, art. 15.1). The UN protocol promotes, thereby, a brokering norm that is of only a low binding character. Likewise, the OSCE document merely stipulates that states ‘will consider’ the establishment of national controls on brokers

(OSCE, 2000, sec. III.D.1). The Bamako Declaration and the OAS Convention also fail to explicitly commit states to the introduction of brokering controls although they raise the desirability of controls in this issue area. The analysis of the internal norm characteristics shows therefore the existence of clear limits in the maturity of most multilateral brokering norms.

Nevertheless, several aspects of developments in the normative cluster of brokering controls challenge traditionalist predictions. The legally binding ECOWAS Convention and the EU Common Position contradict predictions. The ECOWAS Convention stipulates controls on brokering and brokering-related activities as well as on brokers operating from abroad. The ECOWAS Convention also details licensing and registering brokers as control measures and provides criteria that states are invited to respect in their decisions on brokering licenses (ECOWAS, 2006, art. 20). This means that the ECOWAS Convention contains mature brokering norms, that is, norms on the control of brokering that have high levels of comprehensiveness, detail, and binding character. Similarly, the EU Common Position contains mature norms on brokering controls due to the high levels of detail and binding character. States went further therefore than traditionalist expectations in at least certain sub-regions. They legally committed to the introduction of controls and incurring the associated costs required to combat the participation of brokers in illicit arms transfers.

In addition, brokering norms developed towards greater levels of maturity after their initial adoption in some instances. The 2003 OSCE Best Practice Guide extends the recommendations on brokering controls in the 2001 OSCE Document to the control of brokering-related activities and to brokers operating from abroad. The 2001 EU Guidelines on brokering controls recommend the licensing of brokering activities and



the registration of brokers. The 2003 EU Common Position imposes a legal obligation on states to license brokering activities and ‘encourages’ states ‘to consider’ controlling brokers operating from abroad. The 2004 Nairobi Protocol introduces a legally binding obligation on states to register brokers and license their activities in the Great Lakes Region and Horn of Africa. In the Wassenaar Arrangement, states committed to establish controls on small arms brokering in 2002. The 2003 Wassenaar Elements for Effective Legislation specify that controls should include the licensing of brokering activities, recommend controlling brokers operating from abroad, and extend controls to the brokering in all conventional arms.

The developments in internal norms characteristics at sub-regional levels contrast with those at the global level. Of particular interest here is the incremental acceptance of greater constraints by EU states on their national flexibility in relation to brokering controls. States did not agree on the necessity of multilateral norms on brokering controls when adopting the EU Code of Conduct on arms exports in 1998. But the adoption of a framework for the continued dialogue between states on common arms export standards facilitated further steps towards EU norms on brokering controls. Within a three year period, EU states agreed that the issue deserved further attention and adopted the voluntary EU Guidelines. This reflected an increasing acceptance by states that their responsibilities in relation to arms export controls extend to preventing brokers arranging undesirable transfers from their territories (see chapter five). Two years later, all EU states accepted the need to establish and maintain a licensing requirement for brokers operating in their territory.

The lack of comparable developments at the global level points towards important differences in multilateral dynamics. The initial adoption of EU brokering norms was facilitated by the prior understanding among EU states that they had a special

responsibility as arms exporting states in preventing illegal and undesirable arms transfers. The maturing of EU brokering norms was facilitated by a continued socialisation and learning process among states following the adoption of national brokering controls in an increasing number of individual EU states. The adoption and maturing of EU brokering norms was further facilitated by consistent non-governmental advocacy and responsiveness thereto in the liberal democracies in EU states (see chapters five and six). Similar conditions do not exist at the global level, and many states outside sub-Saharan Africa and the Western world remain unconvinced of the need to further develop multilateral brokering controls (see chapter four).

The developments in the internal characteristics of sub-regional brokering norms also illustrate different possible pathways for subsidiary norms. The 2001 introduction in the EU of a voluntary commitment to licensing brokers was followed by the 2003 adoption of this subsidiary norm as a legally binding commitment. In contrast, the commitment to register brokers remains a voluntary measure in the 2003 EU Common Position. Further, the Common Position introduces a voluntary commitment to controlling brokers from abroad but not to controlling brokering-related activities. In addition, controls on brokers operating from abroad are only raised in instruments adopted since 2003. This reflects an increasingly detailed understanding by the relevant states of the complex control challenges that are posed by illicit and otherwise undesirable brokering.

In summary, the willingness of states to cooperate on brokering controls remains limited. This is indicated by the low to medium levels of maturity in most multilateral clusters on brokering controls. Global norms on brokering are of low level of comprehensiveness and were not further developed after their adoption in 2001.

Especially cost-intensive controls such as controls on brokering-related activities and on brokers operating from abroad are less widely established than controls on core-brokering activities. The analysis demonstrates that many states did not adopt brokering norms with internal characteristics that greatly constrain national flexibility in the security sphere or entail high administrative costs and burdens. It also demonstrates that many states outside the Western world do not consider the introduction of brokering controls to be in their economic self-interest. They do not see the potential costs of introducing controls as justified by the possible contribution of such controls to combating illicit and otherwise undesirable arms transfers.

At the same time, there exist clear differences between multilateral norms on brokering controls. Norms on brokering were not further developed at the global level after 2001. In contrast, brokering norms developed towards high levels of detail and binding character in the EU after 2001. Control elements such as the registration of brokers or controlling their activities abroad remain voluntary in the EU. But states incrementally accepted the argument that they have a responsibility as arms exporting states to ensure that their territories are not used for arranging illicit arms transfers. They accepted therewith to bear the administrative costs associated with the maintenance of a national licensing system for brokers. Importantly, states accepted the controls with the aim to contribute to the combat of illicit arms transfers abroad. In social constructivist terms, this points to the emergence of new elements in perceptions of national security interests.

In short, states in at least some sub-regions adopted brokering norms of which the internal characteristics directly affect their national economic interests. There is consequently at least sub-regional evidence that the adoption of brokering norms represents a significant change in the willingness of states to cooperate in the security

sphere. The conditions that facilitated relevant developments in the EU are further explored in chapters five and six.

### **3.3.c Norms on small arms stockpile controls**

The way states manage their small arms stockpiles is usually understood as a national prerogative. It is up to each individual state to define and implement national management practices in relation to the safety and security of its stocks of small arms. Research into illicit small arms flows in the late 1990s and early 2000s suggested that poor stockpile controls facilitate small arms diversions from state actor stockpiles through theft, loss, or corruption (see chapter four). Normative entrepreneurs consequently advocate the adoption and implementation of common minimum standards on national stockpile management practices in multilateral small arms instruments. A traditionalist view does not deny the possibility of vague commitments by states to ensure the safety and security of their small arms stocks. Developing states may also have an interest in obtaining technical and financial assistance to modernise their stockpile infrastructure.

At the same time, multilateral norms in the area of stockpile controls have a clear potential to directly interfere with and constrain national practices. The probably most contentious issue in this regard is that of surplus small arms and, specifically, of what constitutes surplus (surplus indicators). Theoretically, multilateral norms could dictate how states are to identify and responsibly dispose of surplus arms. A state could thus find itself in the position to have to destroy what it considers an integral part of its national defence stockpile and, therewith, of its military capacity to ensure its survival. This would conflict with the sovereign right of states to decide on their national defence needs which, in an anarchical system, is seen as essential. Traditionalists would

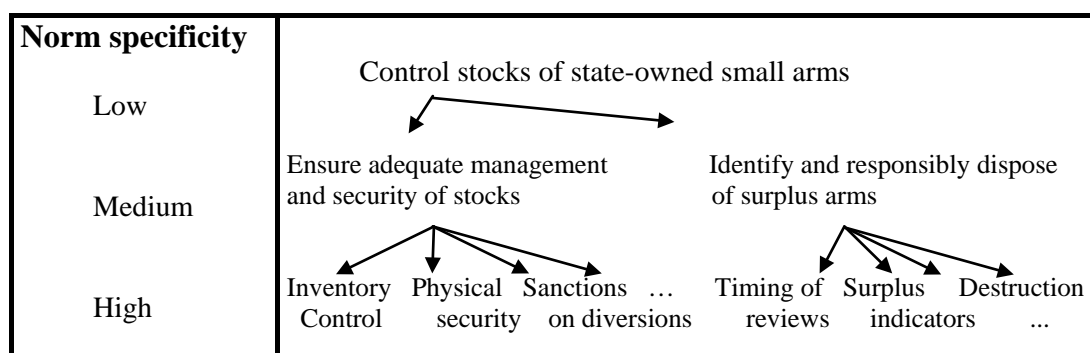
therefore consider unlikely the emergence of multilateral norms on small arms stockpile controls that contain high levels of specificity and binding character.

The following sub-section provides an overview of the normative cluster on stockpile controls and the distribution of subsidiary norms in the relevant multilateral instruments. The research then turns to a comparative analysis of multilateral norms on stockpile controls.

### *3.3.c.1 Structure, distribution, and maturity*

Figure six below identifies subsidiary norms and elements that define the specificity of the normative cluster on small arms stockpile controls. The cluster is underpinned by the basic norm that states should strictly control their small arms stocks to prevent diversions into the illicit sphere. Principal subsidiary norms are that states should ensure the adequate management and security of their stockpiles as well as identify and responsibly dispose of those small arms that are surplus to national defence requirements. The subsidiary norms may be further detailed with specifications that states should ensure adequate inventory controls, physical security of stocks, and sanctions on diversions. Elements in relation to surplus small arms include specifications of criteria and timing of reviews to identify surplus as well as that surplus small arms are to be destroyed. A cluster that is restricted to only stipulating that states should control their small arms stocks without further elaborating on required measures contains norms of a low level of specificity. A cluster that stipulates safety and security measures as well as measures in relation to surplus small arms and further details these subsidiaries contains norms of a high level of specificity.

**Figure 6: The normative cluster on stockpile controls**



Tables nine and ten below provide an overview of the distribution of elements of small arms stockpile norms that are contained in multilateral instruments. Table nine focuses on elements detailing the adequate management and security of stocks. They are specifications that states should ensure appropriate locations for stockpiles; physical security measures; controls on the access to stocks; adequate inventory and accounting procedures; and sanctions on the loss or theft from their stocks. Each of these specifications may be further elaborated to detail the standards that states should adopt in order to implement the relevant specification.

Table ten focuses on elements detailing measures in relation to surplus arms. They include the specifications that, in order to identify such surplus arms, states should conduct regular reviews of their stocks as well as additional reviews after certain events. These events may also be taken as indicators for the possible creation of small arms that are surplus to national requirements. They include, *inter alia*, changes of national defence policies, the reduction or re-structuring of military and security forces, and the modernisation of small arms stocks. Further specifications on surplus small arms include that such arms should, once identified, be securely stored and preferably disposed of through their destruction.

**Table 9: Distribution of norms on stockpile safety and security**

Instrument	Control areas referred to in instruments				
	Locations of stockpiles	Physical security	Access to stocks	Inventory controls	Sanctions on diversions
UN Programme of Action	Yes	Yes	Yes	Yes	Yes

<b>Bamako Declaration</b>	---	---	---	---	---
<b>Nairobi Protocol</b>	---	Yes	---	Yes	---
<b>Nairobi Best Practices</b>	Yes	Yes	Yes	Yes	Yes
<b>SADC Declaration</b>	---	---	---	---	---
<b>SADC Firearms Protocol</b>	---	---	---	Yes	---
<b>ECOWAS Convention</b>	Yes	Yes	---	Yes	Yes
<b>OSCE Document</b>	Yes	Yes	Yes	Yes	Yes
<b>OSCE Best Practices</b>	Yes	Yes	Yes	Yes	Yes

**Table 10: Distribution of norms on surplus small arms**

<b>Instrument</b>	<b>Control areas referred to in instruments</b>				
	Regular reviews	Additional reviews	Surplus indicators	Safe storage of surplus	Destruction of surplus
<b>UN Programme of Action</b>	Yes	---	---	Yes	Yes
<b>Bamako Declaration</b>	---	---	---	---	Yes
<b>Nairobi Protocol</b>	---	---	Yes	Yes	Yes
<b>Nairobi Best Practices</b>	Yes	Yes	Yes	Yes	Yes
<b>SADC Declaration</b>	---	---	Yes	Yes	Yes
<b>SADC Firearms Protocol</b>	---	---	Yes	Yes	Yes
<b>ECOWAS Convention</b>	Yes	---	---	Yes	Yes
<b>OSCE Document</b>	Yes	Yes	Yes	---	Yes
<b>OSCE Best Practices</b>	Yes	---	Yes	---	Yes

Table eleven below identifies the levels of maturity of multilateral norms on small arms stockpile controls. An instrument stipulating that states should ensure the adequate management and security of stocks as well as identify and responsibly dispose of surplus small arms contains norms with a high level of comprehensiveness. An instrument that further specifies all or most of the elements that detail these subsidiary norms contains norms of a high level of detail. An instrument with a high level of comprehensiveness, detail, and/or binding character in its norms on stockpile controls contains mature norms in this issue area. Instruments that commit states to some or only

few of the subsidiary norms and their specifications contain norms of a medium and low level of comprehensiveness and detail. Medium and low levels of comprehensiveness, detail, and/or binding character signal norms on small arms stockpile controls that are of medium and low levels of maturity respectively.

**Table 11: Maturity of multilateral norms on stockpile controls**

Instrument	Norm specificity		Binding character	Norm maturity
	<i>Comprehensiveness</i>	<i>Detail</i>		
<b>UN Programme of Action</b>	High	High	Medium	<b>High</b>
<b>Bamako Declaration</b>	Medium	Low	Medium	<b>Medium</b>
<b>Nairobi Protocol</b>	High	Medium	High	<b>High</b>
<b>Nairobi Best Practices</b>	High	High	Low	<b>Medium</b>
<b>SADC Declaration</b>	Medium	Low	Medium	<b>Medium</b>
<b>SADC Firearms Protocol</b>	High	Medium	High	<b>High</b>
<b>ECOWAS Convention</b>	High	Medium	High	<b>High</b>
<b>OSCE Document</b>	High	High	Medium	<b>High</b>
<b>OSCE Best Practices</b>	High	High	Low	<b>Medium</b>

### *3.3.c.2 Comparative analysis*

The analysis of multilateral instruments indicates that more than half of the relevant instruments contain norms on small arms stockpile controls that are of a high level of maturity. This result is unexpected from a traditionalist point of view. Notably, most of the instruments refer to all of the subsidiary norms, that is, management practices, stock security, surplus indicators, and the destruction of surplus small arms. This means that most instruments contain norms on stockpile controls with a high level of comprehensiveness. Further, several instruments refer to all or most of the elements that elaborate on the subsidiary norms and consequently contain norms with a high level of detail. They are the UN Programme, the Nairobi Best Practices, the OSCE Document, and the OSCE Best Practices. A third of the instruments contain legally and consequently highly binding norms on stockpile controls. They are the Nairobi



Protocol, the SADC Protocol, and the ECOWAS Convention. The high levels of comprehensiveness, detail, and/or binding character suggest that more than half of the instruments contain norms on small arms stockpile controls that are of a high level of maturity. The emergence of highly mature norms in this issue area is surprising from a traditionalist perspective. Indeed, only the Bamako Declaration and the SADC Declaration reflect what traditionalists may have expected.

Both the Bamako and the SADC Declaration contain norms of a medium level of comprehensiveness. The Bamako Declaration does not explicitly refer to the need for stockpile security, the SADC Declaration does not explicitly refer to need for adequate management practices and stockpile security. In addition, the two instruments contain stockpile control norms that are of a low level of detail. The Bamako Declaration simply commits states to the responsible management of state-owned small arms and the identification and destruction of surplus arms. But it does not define the responsible management of stocks or how national authorities should identify surplus small arms. This leaves states with flexibility in the interpretation and implementation of stockpile controls. The SADC Declaration does not even raise the need for management practices and security of stocks. It simply stipulates that states should improve the control over state-owned small arms. Again, this leaves a maximum of flexibility for states in national practices. A traditionalist approach explains less easily why states agreed to norms on stockpile controls that are more restrictive and constraining in the other instruments. Two thirds of the instruments also provide guidance in the sensitive issue surplus identification.

Further, changes took place towards greater levels of comprehensiveness and/or detail in certain sub-regional norm clusters. States in the African Great Lakes Region and Horn of Africa did not adopt norms on stockpile controls in the 2000 Nairobi

Declaration. Four years later and following the adoption of global norms, states agreed on norms of a high comprehensiveness and medium detail in the 2004 Nairobi Protocol. Another year later, they adopted additional recommendations and therewith norms of a high level of detail. Similarly, states in Southern Africa adopted more mature norms on stockpile controls in the 2001 SADC Protocol. This followed the adoption of more limited norms in the SADC Declaration and the UN Programme. Specifically, the SADC Protocol introduces the elements of inventory controls, surplus indicators, and safe storage and destruction of surplus that were previously absent in Southern Africa. The incremental steps towards more mature norms suggest an increased understanding among states about the requirements of effective stockpile controls. They also suggest an increased acceptance that the contribution of effective stockpile controls to the combat of diversions justifies multilateral norms in an area previously considered as an exclusive national prerogative.

The emergence of mature norms on stockpile controls at the global level deserves further analysis. It demonstrates that states agreed to norms of a high level of comprehensiveness and detail in an area directly related to national sovereignty and security interests. At the same time, the UN Programme does not include surplus indicators or define situations that may lead to creation of surplus. This reflects the resistance by individual states to what they consider an undue interference in their national sovereignty (see chapter four). These states could nevertheless be convinced to allow the adoption of norms that allow interested states to obtain foreign assistance. Such an interest by at least sub-Saharan African states is clearly expressed in the Bamako Declaration. It recommends that African states develop national programmes for “the identification and the destruction [...] where necessary, of surplus [...] stocks in possession of the state, with, as appropriate, international financial and technical

support” (OAU, 2000, para. 3.A.iv). An interest to have the possibility to obtain foreign assistance for stockpile improvements may also help to explain the adoption of highly mature norms in the Nairobi and SADC protocols.

In summary, the norms that states adopted on stockpile controls often go further in their comprehensiveness, detail, and/or binding character than what traditionalists may have expected. This shows that the internal characteristics of most stockpile control norms cannot be judged as superficial and unrelated to national security interests. The emergence of mature stockpile norms consequently provides some evidence for a significant change in the willingness of states to cooperate on arms control issues. Further, there was no global consensus on adopting specifications on surplus indicators. But states in most other multilateral arrangements did adopt this element of stockpile control norms. The absence of individual states opposing this element made possible a more comprehensive agreement in several sub-regional settings than what was possible at the global level.

In social constructivist terms, the high maturity of stockpile control norms suggests a change in national security perceptions of many states. Issues previously considered as exclusive national domains were accepted as adequate for multilateral cooperation. This change was made possible by the acceptance of states that poor national controls could contribute to arms diversions and therewith to armed crime as well as conflict. It was further facilitated by the acceptance that individual states may request international assistance to improve stockpile controls.

### **3.3.d Norms on arms transfer criteria**

As indicated, norms on arms transfer criteria predate the emergence of the small arms issue and apply to conventional arms as well as small arms. The criteria serve as a basis for governmental decisions on whether to authorise or deny applications for the export, transit, or import of arms. To illustrate, one criterion already established in NATO and the Warsaw Pact during the Cold War is that states should not export to or import arms from states of the opposing military alliance. The end of the Cold War opened political space for the development of a broader range of criteria that focus not only on the security of the state deciding on a transfer license and its allies. Rather, complementary norms on transfer criteria emerged that seek to limit threats of insecurity and arms diversions abroad. While strongly promoted by non-governmental arms control advocates, such norms have the potential to greatly constrain and limit national flexibility in arms transfer decisions. From the perspective of arms exporting states, restrictive criteria may entail a loss of export possibilities and therewith undermine the viability of the domestic arms industry. From the perspective of importing states, restrictive criteria may entail increased difficulties to procure arms on international markets. For example, an importing state may see its efforts to obtain arms hampered because exporting states fear the arms would be used in human rights violations in the importing state.

As with other norms in the field of conventional arms and small arms control, a closer analysis is required to assess the degree to which norms that states adopted on transfer criteria actually constrain and conflict with national security interests. The following sub-section clarifies the normative cluster that makes up the issue area of transfer criteria as well as the distribution and maturity of the relevant norms in multilateral instruments. The analysis then turns to contrasting the comprehensiveness,

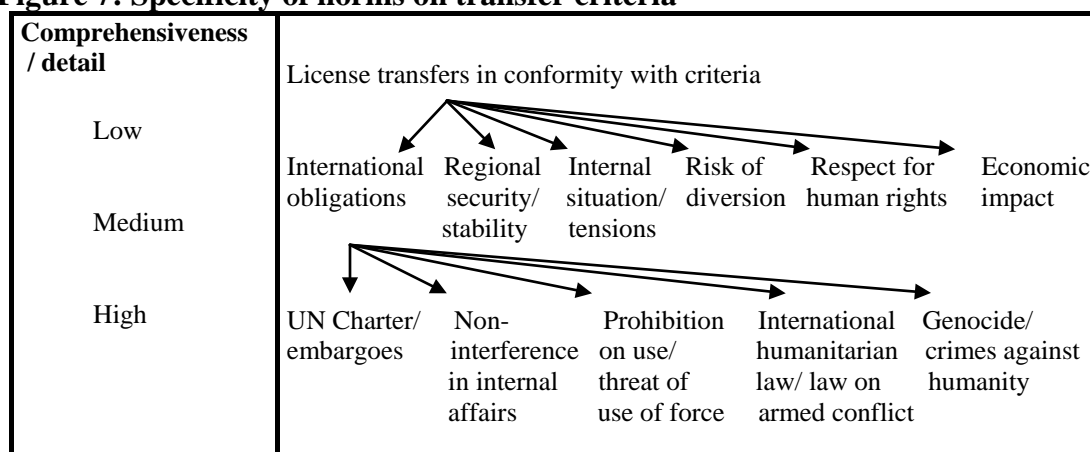
detail, and binding character of the adopted norms on transfer criteria against traditionalist predictions.

#### *3.3.d.1 Structure, distribution, and maturity*

Figure seven below provides an overview of the subsidiary norms and some of the elements that define the specificity of normative clusters on arms transfer criteria. The basic norm that underpins the cluster is that governments should only license transfers that are in accordance with adequate criteria. The contents and scope of what constitutes 'adequate' transfer criteria is open to contestation. Nevertheless, there is a range of principal subsidiary norms that are frequently encountered in the context of transfer criteria. One prominent subsidiary norm is that states should respect their obligations and responsibilities under international law when deciding on arms transfers and/or consider the compliance of the importing state with its obligations under international law (norm on international obligations). Further subsidiary norms are that transferring states should avoid transfers that would negatively impact on security or stability in the region to which the arms are to be transferred (regional security /stability); negatively impact on the internal security situation in the importing state by raising or aggravating existing conflicts or tensions (internal situation / tensions); or give rise to the risk of diversion to unauthorised end-users (risk of diversion). Another subsidiary norm is that arms transferring states should take the human rights situation in the importing state into account and avoid transfers that would be used in violations of human rights (respect for human rights). Exporting states may also take into account in their export decisions the principle that states should achieve their legitimate security and defence needs with the least diversion of human and economic resources for armaments (economic impact).

Subsidiary norms on arms transfer criteria may differ in the levels of detail between different multilateral arms control instruments. For reasons of space, figure seven focuses on elements that detail the norm that states should respect their obligations under international law and/or the respect of the importing state for its obligations under international law. Arms control instruments may fail to specify what the obligations under international law may entail. In contrast, control instruments may specify relevant obligations to include obligations arising from the UN Charter and/or arms embargoes that are decided by the UN Security Council. Control instruments may detail further specifications, including the respect for the principles of non-interference in the internal affairs of another state and to refrain from the use or threat of use of force in contravention of legitimate rights of states to self-defence. Additional specifications that detail obligations of states under international law when considering arms transfers may include avoiding transfers that would be used in serious violations of international humanitarian law and/or the law governing the conduct of armed conflicts or the commission of genocide and crimes against humanity. A normative cluster that limits itself to only stipulating that states should license arms transfers in conformity with adequate criteria indicates a low level of specificity. A cluster that also includes subsidiary norms and that further details these subsidiaries indicates a medium and high level of specificity respectively.

**Figure 7: Specificity of norms on transfer criteria**



Tables twelve and 13 illustrate the distribution of subsidiary norms and the elements detailing international obligations of states in their arms transfer decisions in multilateral instruments. Table twelve focuses on the distribution of subsidiary norms on arms transfer criteria in multilateral instruments on conventional arms as well as small arms control that states adopted since the early 1990s. Table 13 provides an overview of the distribution of elements in the relevant multilateral instruments that detail the obligations of states under international law in their arms transfer decisions. The relevant subsidiary norms and elements in table twelve and 13 are those that are identified in figure seven above.

**Table 12: Distribution of arms transfer criteria in multilateral instruments**

	International obligations	Regional security / stability	Internal situation / tensions	Risk of diversion	Respect for human rights	Economic impact
<b>UNSC Guidelines for Arms Transfers</b>	Yes	Yes	---	---	---	Yes
<b>UNGA Guidelines for Arms Transfers</b>	Yes	---	---	---	Yes	---
<b>UN Programme of Action</b>	Yes	---	---	Yes	---	---
<b>EC Declaration on Non-Proliferation</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>EU Code of Conduct</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Nairobi Best Practices</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>ECOWAS Convention</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>OSCE Principles on Arms Transfers</b>	Yes	Yes	Yes	Yes	Yes	Yes

<b>OSCE Document</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>WA Best Practices</b>	Yes	Yes	Yes	Yes	Yes	Yes

**Table 13: Distribution of elements detailing respect for international obligations**

	UN Charter / embargoes	Non-inter- ference in internal affairs	Prohibition on threat of use of force	International humanitarian law / law on armed conflict	Genocide and crimes against humanity
<b>UNSC Guidelines for Arms Transfers</b>	Yes	Yes	---	---	---
<b>UNGA Guidelines for Arms Transfers</b>	Yes	Yes	Yes	---	---
<b>UN Programme of Action</b>	---	---	---	---	---
<b>EC Declaration on Non-Proliferation</b>	Yes	---	---	---	---
<b>EU Code of Conduct</b>	Yes	---	---	Yes	---
<b>Nairobi Best Practices</b>	Yes	Yes	Yes	Yes	Yes
<b>ECOWAS Convention</b>	Yes	Yes	Yes	Yes	Yes
<b>OSCE Principles on Arms Transfers</b>	Yes	---	Yes	---	---
<b>OSCE Document</b>	Yes	---	Yes	Yes	---
<b>WA Best Practices</b>	Yes	---	Yes	Yes	---

Table 14 identifies the maturity of multilateral norms on arms transfer criteria by looking at the levels of comprehensiveness, detail, and binding character of the normative clusters in the relevant multilateral instruments. Instruments containing two or less of the subsidiaries have a low level of comprehensiveness, those containing three of four of the subsidiaries have a medium level of comprehensiveness, and those containing five or six of the subsidiaries have a high level of comprehensiveness. Instruments that contain one or two of the relevant elements are low in detail, those with three to four elements are of a medium level in their detail, and those with more than four elements are of a high level of detail. Normative clusters with low levels in at least two of their internal characteristics and none with a high level contain norms of a low maturity. Clusters with high levels in at least two of their internal characteristics



and none of a low level contain norms of a high level of maturity. Other clusters contain norms of a medium level of maturity.

**Table 14: Maturity of multilateral norms on transfer criteria**

Instrument	Norm specificity		Binding character	Norm maturity
	<i>Comprehensiveness</i>	<i>Detail</i>		
<b>UNSC Guidelines for Arms Transfers</b>	Medium	Low	Low	<b>Low</b>
<b>UNGA Guidelines for Arms Transfers</b>	Low	Medium	Low	<b>Low</b>
<b>UN Programme of Action</b>	Low	Low	Medium	<b>Low</b>
<b>EC Declaration on Non-Proliferation</b>	High	Low	Low	<b>Medium</b>
<b>EU Code of Conduct (2008)</b>	High	Low	High	<b>Medium</b>
<b>Nairobi Best Practices</b>	High	High	Low	<b>Medium</b>
<b>ECOWAS Convention</b>	High	High	High	<b>High</b>
<b>OSCE Principles on Arms Transfers</b>	High	Low	Medium	<b>Medium</b>
<b>OSCE Document</b>	High	Medium	Medium	<b>Medium</b>
<b>WA Best Practices</b>	High	Medium	Medium	<b>Medium</b>

### 3.3.d.2 Comparative analysis

The analysis of multilateral norms on arms transfer criteria shows that the relevant instruments at the global level contain norms on arms transfer criteria that are of a low level of maturity. Further, most sub- and trans-regional instruments contain norms of a medium level of maturity. The low to medium levels of maturity in norms on arms transfer criteria reflect the traditionalist expectation that states are not willing to accept norms that may seriously constrain and limit their national flexibility in arms transfer decisions. Traditionalist expectations are also borne out in relation to the low levels of comprehensiveness and/or detail in the global instruments, the EC Declaration, the EU Code of Conduct, and the OSCE Principles on arms transfers. Further, most instruments are of a low to medium binding character. Indeed, the guidelines on arms transfers adopted by the permanent five members of the UN Security Council are a clear illustration of traditionalist expectations. The guidelines represent a voluntary

commitment by its signatory states. The guidelines raise several subsidiaries but do not provide much detail in at least the subsidiaries on international obligations. The guidelines thereby leave the permanent five members with considerable flexibility in national practices.

Nevertheless, the norms that states adopted on arms transfer criteria in several multilateral forums are noteworthy. In particular, all sub- and trans-regional instruments contain norms of a high level of comprehensiveness. This demonstrates that states went further in their agreements at sub- and trans-regional levels than at the global level. In addition, the Nairobi Best Practices and the ECOWAS Convention contain norms with a high level of detail in relation to international obligations of states in their arms transfer decisions. While the Nairobi Best Practices are of an only low level of binding character, the ECOWAS Convention is of a high binding character. Further, the EU Code of Conduct was transformed into a legally binding EU Common Position in 2008 and is therewith also of a high binding character. The ECOWAS Convention also contains highly comprehensiveness and detailed norms and therewith norms on arms transfer criteria that are of a high level of maturity. The examples demonstrate that states did not limit their cooperation on arms transfer criteria levels to only low levels at sub- and trans-regional.

Moreover, there are several examples of states further developing common standards on arms transfer criteria after the initial adoption of more limited commitments. This is surprising from a traditionalist perspective because states are not considered likely to agree to increasingly restrictive standards in issue areas restricting national flexibility in the security sphere. For example, the EU Code of Conduct details that exporting states should consider the compliance of the buyer country with “its international commitments, in particular on the non-use of force, including under

international humanitarian law applicable to international and non-international conflicts” (Council of the EU, 1998, criterion 6). The EU Code thereby introduces an explicit reference to international humanitarian law that is absent in the 1991/2 EC Declaration. Further, EU member states agreed to change the status of the EU Code from a politically binding to a legally binding instrument in December 2008. Similarly, the OSCE Principles on Arms Transfers stipulate that arms exporting states should consider the compliance of the “recipient country with regard to international commitments, in particular on the non-use of force” (OSCE, 1993, para. 4.a.iii). The OSCE Principles do not, however, contain the specification introduced with the later OSCE Document that exporting states should also consider the respect of the recipient state with regard to “international law governing the conduct of armed conflict” (OSCE, 2000, section III, A.2.a.iii).

The analysis of arms transfer criteria also demonstrates changes in the conception of certain subsidiary norms. One development, already referred to above, is the explicit reference to international humanitarian law in transfer criteria. The specification only emerged in regional, sub- and trans-regional instruments that were adopted since 2000. Another change concerns the standard that states should consider the economic impact of arms transfers in the recipient state. Most of the instruments refer to the aim that buyer countries attain their legitimate security and defence needs with the least diversion of human and economic resources to armaments (see table twelve). It is, however, only the sub-regional instruments that were adopted most recently, that is, the 2005 Nairobi Best Practices Guidelines and the 2006 ECOWAS Convention, which explicitly refer to the more recent concept of ‘sustainable development’.

In summary, there exist undeniable limits to the willingness of states to adopt highly mature and therewith highly restrictive norms on arms transfer criteria. This is especially the case at the global level. But the norms that states adopted on arms transfer criteria at several other levels cannot be considered as insignificant. The internal characteristics of norms in these forums are more developed and restrictive on national flexibility than what traditionalists may have expected. Examples are the high levels of comprehensiveness and binding character of norms on arms transfer criteria in the EU. States in this sub-region agreed to significant constraints on their national flexibility in arms transfer decisions not as a confidence-building measure among themselves but to prevent undesirable impacts of arms transfer on security and stability outside the EU region. In social constructivist terms, this suggests an important change in the understanding of EU states in relation to their responsibilities as arms exporting states (see also chapter five).

### **3.3.e Norms on transparency in arms transfers**

Transparency on arms transfers entails the reporting by states on, at a minimum, the origin or destination and the type and quantity of the transferred arms. As is the case with norms on arms transfer criteria, norms on transfer transparency originally focussed on conventional arms and predate the emergence of the small arms issue. This is demonstrated by the voluntary commitment of states to report on their conventional arms transfers under the 1991 UN Register on Conventional Arms. This transparency on transfers is complemented with the voluntary reporting on national military expenditures. One aim of such transparency on transfers is to act as a confidence building measure between states by limiting suspicions about secret arms build-ups. At the same time, the exchange of highly comprehensive and detailed information on arms

transfers and procurement allows other states to gain important insights into their military capabilities and preparedness to sustain an armed conflict. Transparency may directly conflict therefore with national security interests. Transparency may also allow for non-governmental scrutiny of the implementation by governments of their declared arms transfer policies. This can constrain governments in their exclusivity and flexibility in arms transfer decisions because they may have to consider the reaction of non-governmental actors to transfer decisions in at least certain regions and states.

As indicated, the degree to which reporting on arms transfers interfere with national security interests and the autonomy of governments in arms transfer decisions depends on several factors. The following sub-sections provide an overview of the structure, diffusion, and maturity of multilateral norms on transfer transparency on conventional arms and small arms as well as a comparative analysis of these norms. The analysis allows for a determination of whether the internal characteristics of the norms that states adopted on transparency since the early 1990s significantly constrain flexibility and governmental autonomy in transfer decisions.

#### *3.3.e.1 Structure, distribution and maturity*

Figure eight below illustrates the normative cluster on transfer transparency and different levels of specificity of norms within such a cluster. The basic norm that underpins the issue area of transfer transparency is that states should report the cross-border transfers they authorise. One subsidiary norm that defines the comprehensiveness of a cluster is the range of recipients of information on arms transfers. Information exchanges may be restricted to only governments (inter-governmental transparency) or also make the information available to parliaments (parliamentary transparency) and the broader public (public transparency). Another

subsidiary norm concerns the geographical scope that is covered by the transparency mechanisms as well as the types of reported transfers. Governments may share information on transfers to and from all destinations. In contrast, data exchanges may be restricted to the reporting of only transfers to and from certain regions and/or of only exports or imports.

Specifications that detail norms on transparency include that state should report on only certain categories of conventional arms such as small arms or on all categories of conventional arms. Another specification concerns the contents of data that is to be exchanged. Multilateral instruments may fail to detail the contents of such data altogether, or they may detail the data to include an identification of the category and quantity of the transferred arms and the importing/exporting states (basic data). A more detailed approach includes the exchange of additional information such as the financial value of the transferred arms. A further specification relates to the regularity of reporting which can range from annual to biannual or even more frequent reporting on arms transfers.

An instrument contains a normative cluster with a low level of specificity if it restricts reporting to the inter-governmental level and the annual provision of only basic data on certain types of arms and destinations. A high level of specificity is indicated by biannual and public reporting as well as the provision of detailed information on a comprehensive range of types of transfers, destinations, and categories of transferred arms.

**Figure 8: Specificity of norms on transfer transparency**

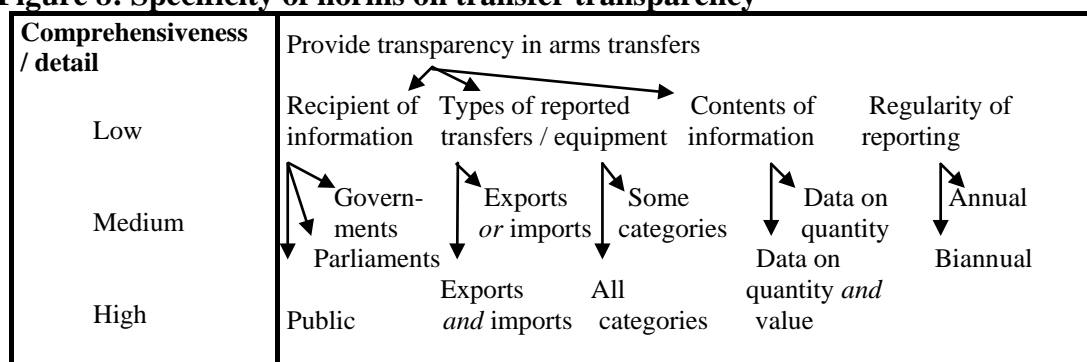


Table 15 below provides an overview of the distribution of subsidiary norms and elements on transparency in the relevant multilateral instruments. Specifically, the table identifies the recipients of data and geographical scope of reported transfers as well as the regularity and arms categories that are reported and the contents of the information that is exchanged. Table 16 illustrates the levels of comprehensiveness and detail of transparency norms. Norms that are restricted to inter-governmental reporting on transfers to or from only certain destinations are of a low level of comprehensiveness. They are of a low level of detail if they also restrict reporting to only basic data on certain categories of equipment and types of transfers. Norms with a high level of comprehensiveness are suggested by public reporting and/or the reporting on all types of transfers to and from all destinations. Norms with a high level of detail are indicated by the biannual reporting on transfers of all arms categories and the provision of data on quantity as well as value of the transfers.

**Table 15: Distribution of subsidiary norms and elements transparency**

	<i>Recipient of Data</i>	<i>Geographical scope</i>	<i>Covered categories</i>	<i>Regularity of reporting</i>	<i>Information contents</i>
<b>UN Conventional Arms Register</b>	Public	To / from everywhere	Conventional arms	Annual	Basic data
<b>OAS Convention on Transparency</b>	Governments	To / from everywhere	Conventional arms	Annual	Basic data
<b>EU Code of Conduct</b>	Governments	Transfers to Non-members	Conventional & small arms	Annual	Not defined
<b>EU Code of Conduct reports</b>	Public	Transfers to Non-members	Conventional & small arms	Annual	Basic data + value
<b>ECOWAS Convention</b>	Governments	To / from everywhere	Small arms	Annual	Basic data + value
<b>OSCE exchange</b>	Governments	To / from	Conventional	Annual	Basic data

<b>on arms transfers</b>		members	arms		
<b>OSCE Document</b>	Governments	To / from members	Small arms	Annual	Basic data
<b>WA Initial Elements</b>	Governments	Transfers to Non-members	Conventional & small arms	Biannual	Basic data

**Table 16: Levels of comprehensiveness and detail of transparency norms**

	<i>Comprehensiveness</i>		<i>Detail</i>		
	<i>Recipient of data</i>	<i>Geographical scope</i>	<i>Covered categories</i>	<i>Regularity of reporting</i>	<i>Information contents</i>
<b>UN Conventional Arms Register</b>	High	High	Medium	Medium	Medium
<b>OAS Convention on Transparency</b>	Low	High	Medium	Medium	Medium
<b>EU Code of Conduct</b>	Low	Low	High	Medium	Low
<b>EU Code of Conduct reports</b>	High	Low	High	Medium	High
<b>ECOWAS Convention</b>	Low	High	Low	Medium	High
<b>OSCE exchange on arms transfers</b>	Low	Low	Medium	Medium	Medium
<b>OSCE Document</b>	Low	Low	Low	Medium	Medium
<b>WA Initial Elements</b>	Low	Low	High	High	Medium

Table 17 below identifies the levels of maturity of multilateral norms on transfer transparency on the basis of the levels of comprehensiveness, detail, and binding character in their internal characteristics. A normative cluster with a low level of maturity only encourages states to annually report transfers of only certain equipment to or from certain destinations and limits information to only basic data. A cluster with highly mature transparency norms legally obliges states to provide detailed and regular information on a comprehensive range of transfers, equipment, and destinations.

**Table 17: Maturity of multilateral norms on transparency**

	<i>Norm specificity</i>		<i>Binding character</i>	<b>Norm maturity</b>
	Comprehensiveness	Detail		
<b>UN Conventional Arms Register</b>	High	Medium	Low	<b>Medium</b>
<b>OAS Convention on Transparency</b>	Medium	Medium	High	<b>Medium</b>
<b>EU Code of Conduct</b>	Low	Medium	Medium	<b>Medium</b>
<b>EU Code of Conduct reports</b>	Medium	High	High	<b>High</b>
<b>ECOWAS Convention</b>	Medium	Medium	High	<b>Medium</b>
<b>OSCE exchange</b>	Low	Medium	Medium	<b>Medium</b>



<b>on arms transfers</b>				
<b>OSCE Document</b>	Low	Medium	Medium	<b>Medium</b>
<b>WA Initial Elements</b>	Low	High	Medium	<b>Medium</b>

### *3.3.e.2 Comparative analysis*

The analysis of multilateral norms on transfer transparency shows that most of the relevant norms are of medium maturity with low to medium levels of comprehensiveness, detail, and binding character. At a minimum, the norms promote voluntary annual exchanges between states on their arms transfers. The information is generally detailed to include the country of export and/or import and data on the quantity and category of the transferred arms. The general absence of highly mature norms on transparency reflects traditionalist expectations that states are unlikely to adopt legally binding obligations to regularly report their arms transfers in a comprehensive and detailed manner. States often retain therefore an important degree of flexibility and secrecy in their arms transfer decisions. The UN Register is a good example. States voluntarily submit limited information on transfers of conventional arms. Further, the reported categories exclude most types of small arms. The transparency norms in the UN Register therefore only challenge and constrain national security interests in a limited way. Of further note is the EU Code of Conduct that initially only committed states to report to each other on the implementation of the instrument but did not stipulate any details as to what information or data should be included in the reporting. This reflects the traditionalist prediction that if states adopt norms on transparency, the norms are likely to be vague in relation to the exchanged data. Further, the EU Council publishes a consolidated report on the implementation of the EU Code since 1999. The publication of these EU reports was not required under the EU Code until 2008 and thereby reflected a low level of binding character.

At the same time, several multilateral instruments contain norms on transfer transparency that go further than traditionalist expectations. The information submitted by states to the UN Conventional Arms Register as well as the consolidated reports on the EU Code are publicly accessible and potentially constrain governments in their autonomy on arms transfer decisions. Several instruments promote the reporting of transfers to or from any destination and have a high level of detail in relation to their geographical scope. Examples are the UN Register, the OAS Convention on Transparency, and the ECOWAS Convention. The ECOWAS Convention stipulates that states are to report not only the category and quantity but also the financial value of transferred equipment. Likewise, the reports that are published by the EU Council on the implementation of the EU Code detail the financial value of transfers and have, therefore, a high level of detail in relation to the reported information. Of further note are the Wassenaar Arrangement Initial Elements that stipulate biannual data exchanges between states. The instrument has a high level of detail in the regularity of reporting (see table 13). The Wassenaar Elements and the EU Code also cover conventional arms and small arms in their reporting and contain norms of a high level in relation to the reported categories. Further the ECOWAS and OAS conventions are legally binding as is the submission of national reports under the EU Code of Conduct since 2008.

In addition, multilateral norms on transfer transparency changed in internal norm characteristics towards greater levels of specificity and binding character in at least the case of the European Union. Under the EU Code, states were originally only politically committed to inter-governmental reporting without needing to divulge information on destinations, categories, or quantities of transferred arms. The publication of the consolidated EU Code reports by the EU Council increased the level of transparency by allowing for non-governmental scrutiny of the implementation of the code. There also

took place incremental steps towards greater detail in the provision of information to include basic data and the financial value of arms exports (see also chapter five). Further, the EU Code was transformed into a legally binding instrument in December 2008, thereby changing the commitment of states to provide annual reports into a legally binding obligation. Such changes towards greater levels of maturity are not considered likely in a traditionalist approach because they increasingly remove secrecy about arms transfers and constrain national flexibility and governmental autonomy in arms transfer decisions.

In summary, the overall levels of transparency on arms transfers remain limited and clearly indicate continuing boundaries to the willingness of states to share information on their transfer decisions. At the global level, views of states continue to differ greatly in relation to transparency on arms transfers. States in the Middle East and Asia often continue to consider secrecy on arms transfers as an essential element of their national security needs. This has hindered the adoption of more mature global norms on transparency that are advocated by states in other regions and sub-regions (see chapter four). But the internal norm characteristics in at least some regional and sub-regional forums suggest that states did not always limit their cooperation to a bare minimum. States lifted the secrecy on their arms transfers and accepted constraints on their national flexibility and governmental autonomy in transfer decisions to a degree that is not superficial in these forums. There exists therefore at least some evidence for the significance of the changes in the field of transparency on arms transfers.

The incremental steps towards greater transparency and more mature norms on transparency in the EU are also difficult to explain from a traditionalist perspective. EU states eventually agreed to more constraining and constricting norms than what they

initially agreed to. In terms of neo-liberal institutionalism, the changes may be explained by the establishment of a cooperative framework under the EU Code that reduced the transaction costs of the further elaboration of transparency norms. In terms of social constructivism, the developments point towards significant changes in their understanding of national security interests. As shown in chapters five and six, the developments were facilitated by learning and socialisation processes among EU states and the acceptance of a special responsibility in their arms transfers as a major arms exporting sub-region.

### **3.4 Conclusions**

Chapter three set out to investigate whether the norms that states adopted on conventional arms and small arms control since the early 1990s suggest a significant change in the willingness of states to cooperate in the security sphere. As argued in chapter two, a traditionalist approach to security studies views states as rational actors whose primary concern is their survival in an anarchical system that continuously exposes them to the threat of armed attack. From this follows that states are expected unlikely to accept significant constraints on their national flexibility and secrecy in relation to the production, stockpiling, use, and transfers of conventional arms. This approach does not exclude the emergence of multilateral norms in the security sphere, but there are two important caveats. First, traditionalists would consider unlikely that states adopt norms in arms control issue areas that conflict with national security interests. Second, traditionalists would consider unlikely that states adopt norms that are highly comprehensive, detailed, and binding if this conflicts with national security interest. Chapter three analysed the norms that states adopted on conventional arms and small arms in light of these expectations.

The analysis of the relevant multilateral instruments and norms suggests that traditionalist expectations are partially realised. None of the multilateral instruments contains norms on the prevention of small arms misuse by state actors, that is, norms that directly touch on the use of small arms by state actors. Further, there exist several instruments that restrict their focus to the combat of illicit small arms in the context of armed crime only and exclude norms in areas that raise militarily sensitive issues such as transfer criteria and stockpile controls. States in the Middle East and Asia did not complement global commitments on small arms control with sub-regional instruments. Several of these states also oppose the further development of global norms in areas such as transfer criteria and transparency (see chapter four). The analysis also identified several instruments containing norms that are highly comprehensive and/or detailed but are of little binding character. Conversely, some instruments are of a high level of binding character but contain norms of little comprehensiveness or detail. In addition, the analysis suggests that mature norms on conventional arms and small arms control remain the exception at multilateral levels. There continue to exist therefore clear limits to the willingness of states to cooperate in the field of conventional arms and small arms control.

Nevertheless, the norms that states adopted since the early 1990s cannot be dismissed as insignificant or as a superficial phenomenon only. Most instruments cover state-owned arms and contain norms on transfer and stockpile controls. Most instruments contain norms therefore that potentially constrain national flexibility in issues directly affecting national security interests and military sensitivities. At a minimum, this reflects a changed understanding of states in relation to the issues they consider acceptable to discuss and develop norms in at multilateral levels. Further, states did not restrict themselves to only adopting norms that are of little

comprehensiveness, detail, and binding character. In some instances, they adopted norms of high levels of maturity, including in the issue area of transfer controls and transparency. This contradicts traditionalist expectations that states will seek to retain exclusive national control and flexibility in the field of conventional arms and small arms and in issues directly affecting military sensitivities. The analysis also identified several instances of states adopting norms with increasing levels of maturity after the initial adoption of more limited agreements. The evolutionary processes towards norms of higher maturity and the acceptance of greater constraints on national flexibility in the security sphere are poorly explained by a traditionalist approach.

In summary, clear limits remain to the willingness of states to cooperate on conventional arms and small arms at especially the global level and in some regions and sub-regions. This can be explained by the continuing opposition of individual states to the adoption of norms or their further development in areas they consider to fall under their national sovereignty (see chapter four). Their opposition to what they consider undue interferences in their security interests reflects the behaviour of states that traditionalists would expect in the security sphere. At the same time, the analysis demonstrates that states adopted control norms in areas directly affecting national security interests and, in some instances, norms with a high level of maturity. The result points towards the acceptance of constraints in the areas of conventional arms and small arms control that were previously understood the domain of exclusive national authority. There is consequently some evidence for the significance of the changes in the willingness of states to cooperate in the security sphere.

Further, the continued development of norms in some forums suggests processes that, from the perspective of neoliberal institutionalism, are noted in areas of 'low'

politics but are not expected in the field of conventional arms and small arms control. Specifically, the adoption of initial control instruments assisted in the institutionalisation of the relevant norms at multilateral forums. The instruments and the reviews of their implementation provided frameworks that were conducive to the further elaboration and detailing of control norms. From the perspective of social constructivism, the analysis suggests an increased acceptance by states to discuss certain control issues at the global level. It also suggests a change in the understanding of states in at least some forums in relation to what constitutes their national security interest. Specifically, it reflects a changed understanding of what constraints they are willing to accept on their national practices in relation to conventional arms and small arms control.

Not answered so far are the questions of what drove the emergence and development of global control norms and why states initially agreed to norms that constrain their national flexibility in the security sphere. Also not answered are the questions of the role and impact of non-governmental actors in the development of norms on conventional arms and small arms control. It is to these questions that this research turns to in the following chapter.

## **Chapter 4: Significance of global non-governmental advocacy**

Chapter four focuses on the actors and dynamics that underpinned the emergence and development of norms on conventional arms and especially small arms since the early 1990s. Specifically, it looks at the role and impact of non-governmental advocacy actors in the emergence and development of global control norms. It thereby principally addresses the second of the two primary research questions. To recall, it asks whether the role and impact of such advocates suggests their increased significance in the field of conventional arms and small arms control. That is, non-governmental advocates are visible and active participants in the UN process on small arms control with sometimes close contacts with individual governments. But do their role and impact on control norms suggest an increasing significance of non-governmental advocacy in the field of arms control? Is there evidence therefore for a trend towards a governance of arms control at the global level that includes non-governmental actors? To assist in providing an answer, the chapter considers the degrees to which non-governmental actors played leadership roles in the relevant developments and saw their policy aims realised in relation to control norms. It further looks at the conditions that facilitated or constrained non-governmental influence in the development of control norms.

A traditionalist approach does not deny a possible role of non-governmental advocates in the emergence and promotion of norms in the security sphere. But any role and impact of non-governmental advocacy is expected to be limited and not challenge the primacy of states or substantially constrain states in their pursuit of their national security interests. In particular, traditionalists may argue that non-governmental advocates are likely to only play a role to the extent that their activities are in the interest of states and/or in issue areas that do not interfere with national security interests. They are not expected to be critical actors who enable and drive the



development of control norms (see chapter two). In contrast, a leadership role of non-governmental advocates and their significant impact on policy choices by governments could suggest an important change in the traditional system of global security governance. The following section of this chapter turns to an analysis of the various roles of non-governmental advocacy actors and the importance of their activities in relation to the development of global control norms. The chapter then turns to the analysis of their policy impact in the context of the 2001 UN Programme of Action and developments since 2001.

#### **4.1 Role of non-governmental advocacy**

The existing literature on non-governmental advocacy actors identifies numerous ways in which such actors seek to shape and influence normative developments (see chapter one). It is not the aim here to comprehensively review all of the various activities of non-governmental advocacy actors and their contributions to the development of global norms on small arms control. Rather, the analysis restricts its focus to some of the principal roles of non-governmental advocacy actors, that is, their roles in relation to issue identification, awareness-raising, agenda setting, and ‘technical’ and public advocacy. This sub-section first illustrates the activities of non-governmental actors in these respects. It then turns to contrasting their activities with those of the UN and of states before providing an analysis of the importance of the roles played by non-governmental actors in the relevant areas.

##### **4.1.a Issue identification and awareness-raising**

Non-governmental actors played clear roles in the identification of the challenges that are posed by poor controls on conventional arms and small arms. Indeed, non-

governmental researchers and practitioners in the field of conventional arms control were among the first actors to identify poorly controlled arms flows and accumulations as security challenges. A small number of researchers pointed towards changes in conventional arms supplies already in the late 1980s. Articles that they published in foreign policy and security journals reported a move away from a limited number of suppliers of conventional arms under state control in the developed world towards a greater number of sources for arms, including illicit channels and markets. They also argued that arms transfers could have a destabilising effect in the recipient states and regions. Further publications by non-government researchers highlighted the link between intra-state wars and the easy availability of small arms and light weapons in the early 1990s.<sup>5</sup> By 1995, there existed about 20 articles on the small arms challenge, “as opposed to 1993, when just a few articles had been published” (Garcia, 2006, p. 40).

As argued by Garcia, the non-governmental researchers and practitioners formed an ‘epistemic community of conventional arms control’ that drove the process of knowledge generation on the new challenges of small arms control (*ibidem*, p. 40). Their activities were paralleled by a series of reports by the United Nations Institute for Disarmament Research on the role of small arms in armed conflicts in 1995-96.<sup>6</sup> The publications by non-governmental researchers and organisations provided a background

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<sup>5</sup> Examples are the articles by Michael Klare and by Edwards Lurance, both professors of peace and security studies in the USA, ‘Thriving black market for weapons’ and ‘The new gunrunning’. The articles were published in the *Bulletin of the Atomic Scientists* in 1988 and in *Orbis* in 1989 (Klare, 1988 and Lurance, 1989). Other examples are the articles by the political scientist Aaron Karp, ‘Arming ethnic conflict’ and ‘The arms revolution: the major impact of small arms’. The articles were published in the journals *Arms Control Today* in 1993 and the *Washington Quarterly* in 1994 respectively (Karp, 1993 and 1994). Further examples are the articles ‘The spread of small arms and instability’ by Tara Kartha, published in *Strategic Analysis* in 1993 (Kartha, 1993); ‘Diffusion of small arms and light weapons in Pakistan and Northern India’ by Christopher Smith, published in *Defence Studies* in 1993 (Smith, 1993); ‘Arming genocide in Rwanda’ by Stephen Goose and Frank Smyth, published in *Foreign Affairs* in 1994 (Goose and Smyth, 1994); and ‘Awash in armaments: implications of the trade in light weapons’ by Klare, published in the *Harvard International Review* in 1994 (Klare, 1994).

<sup>6</sup> See Rana, 1995 and other publications by the UNIDIR Disarmament and Conflict Resolution project. Available at <http://www.unidir.ch/bdd/focus-search.php?onglet=5>

to the emerging recognition of the small arms issue at the UN level in the mid 1990s. They also provided a baseline for a growing number of research and advocacy reports on small arms control since the mid 1990s. The trend towards greater numbers of and detail in reports continued in the early 2000s. For example, the Swiss-based Small Arms Survey has produced more than 30 research reports, papers, and books that provide detailed analyses of the small arms challenge since its creation in 2000.<sup>7</sup> Similarly, advocacy projects like the Biting the Bullet project produced a broad range of reports that addressed small arms control issues that states debated at the UN since 2000.<sup>8</sup>

The role of non-governmental advocates in the identification of the small arms issue comprised several aspects. Publications in the early and mid 1990s raised awareness about the challenge of the proliferation and destabilising accumulations of small arms. The publications also outlined possible policy responses to curb small arms proliferation. This ‘general’ assessment of the small arms challenge and options for policy responses became increasingly complemented with the detailed analysis of individual small arms control issues and required policy responses. Examples are non-governmental analyses and advocacy activities around individual control issues such as the marking and tracing of small arms and arms brokering controls (see below). An important element in this context was the provision of credible and policy-relevant information by non-governmental advocates on issues that require detailed and sometimes technical knowledge that was not otherwise readily available to policy makers. Non-governmental advocates disseminated relevant information through the publication of research reports as well as in direct contacts with governmental officials.

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<sup>7</sup> The publications by Small Arms Survey are available via [www.smallarmssurvey.org](http://www.smallarmssurvey.org)

<sup>8</sup> The publications of the Biting the Bullet project can be found via [http://www.international-alert.org/security/security\\_projects.php?t=2](http://www.international-alert.org/security/security_projects.php?t=2)

#### **4.1.b Agenda setting and advocacy efforts**

Agenda setting and advocacy efforts were undertaken by non-governmental pro-gun groups as well as arms control groups. The World Forum for Sport Shooting (WFSP), a pro-gun lobbying group, organised informal workshops on technical aspects of marking firearms in October 1999 and June 2000 (WFSP, 1999 and 2000). The latter workshop brought together participants from governments, international organisations, including the United Nations, the firearms industry, and non-governmental organisations (WFSP, 2000, p. 2). Similarly, non-governmental gun control groups organised numerous workshops with governmental officials and representatives of international organisations on individual small arms control issues since the early 2000s. The technical knowledge that non-governmental advocates provided on such occasions helped identify the scope and range of possible technical control measures. This assisted in the conceptual development of the control measures to combat illicit small arms and, thereby, facilitated informed policy discussions among governmental officials.

Non-governmental advocates further disseminated technical information in their role of consultants to individual governments and inter-governmental organisations. Individual experts were involved in the UN process on small arms since the mid 1990s and acted as consultants to the UN groups that reported on small arms in 1997 and 1999 and/or were invited to present their views to the UN groups (UNGA, 1997, p. 5 and 33-37; and Garcia, 2006, p. 43; UNGA, 1999a, p. 5). In addition, several governments accepted non-governmental experts as members of their delegations at UN meetings on small arms controls since the late 1990s and early 2000s (Greene, interview, 2004). Further, individual governments frequently requested background information and

briefings from non-governmental experts and discussed strategies and priorities for the promotion of small arms controls. The informal contacts between governments and non-governmental advocates also allowed the latter to encourage sympathetic governments to adopt ambitious policy agendas and to facilitate the emergence of coalitions of states willing to pursue such agendas at the global level.

‘Technical’ advocacy efforts by members of epistemic communities on conventional arms control were complemented by public and action-oriented advocacy on small arms control among parliamentarians, the media, and the broader public. Such public advocacy emerged in the late 1990s and was reflected in the establishment of the International Action Network on Small Arms (IANSA) in 1998. IANSA and its member organisations also interacted with governments to promote small arms controls, complementing thereby the technical consultancy that individual experts provided since the mid 1990s. In addition, several IANSA members had direct experiences of working in regions affected by the proliferation and misuse of small arms and could, therefore, act as a conduit for the accounts of victims of small arms misuse. The use of victim accounts helped IANSA to reinforce its message that poor or absent controls on small arms had grave humanitarian consequences and required urgent attention and action.

Many governments welcomed the contribution by IANSA, as well as by pro-gun groups, to debates on small arms control at the UN level. This is reflected in the decision of governments to grant gun control and pro-gun groups partial access to the UN proceedings on small arms control. A majority of states voted in favour of allowing non-governmental actors to sit in and listen to open sessions of negotiations on small arms control. This is notable insofar as, traditionally, disarmament issues tended to be seen as the near-exclusive domain of states at the UN. At the same time, there was no

radical break with traditional arrangements at the UN because gun control and pro-gun groups were not allowed to sit in those session of UN meetings during which states negotiated small arms control agreements. But even the partial access that was granted to non-governmental advocates signalled a new openness of states to interact with non-state actors in the area of disarmament. This new openness was also reflected in the invitation to non-governmental advocates to give presentations to outline their views and proposals on small arms control in the context of the UN process on small arms.

#### **4.1.c Role of the UN and of states**

The activities of non-governmental advocacy actors must be seen in the context of the activities of other prominent actors in the UN process on small arms. The UNIDIR publications in 1995-96 on the impact of small arms in post-conflict situations and UN peace missions served as important baseline studies within the UN system and helped establish the issue on the UN agenda. In addition, the government of Mali had requested the assistance of the UN in the collection of illicit small arms that circulated in the country following its civil war in 1994 (UNGA, 1995, para. 63). The invitation to the UN to assist in the collection was significant inasmuch as it was the first time that a sovereign state requested international assistance in the issue area of small arms control. It also set the stage for a speech by the UN Secretary General in 1995 in which Boutros Boutros Ghali drew international attention to the new threat of small arms proliferation (*ibidem*, paras. 60ff). The UN General Assembly responded to the call for greater attention by mandating the groups of experts on small arms that reported in 1997 and 1999 (UNGA 1997 and 1999a) as well as the negotiation of the UN Programme of Action. The UN Programme later provided the basis for biennial

meetings and the 2006 review conference on the implementation of the UN Programme as well as the development of the International Tracing Instrument.

The above shows that the early awareness of the small arms issue area by specialised UN agencies and the UN Secretary General was an important element in establishing and institutionalising the issue on the UN agenda. The emergence of the issue on the UN agenda legitimised the growing non-governmental advocacy on small arms control. The UN process on small arms also provided an important rallying point and focus for non-governmental advocacy as well as an enabling opportunity for their activities in relation to the promotion of global norms. On one level, it provided non-governmental advocates with opportunities to influence the decisions of states in the General Assembly in relation to next steps in the UN process and the mandating of, for example, groups of experts. As indicated, the UN groups provided at least technical experts with further opportunities to influence recommendations to states in relation to small arms control. On another level, the negotiations of especially the UN Programme and the Tracing Instrument allowed advocates to influence the actual norms that states adopted in these instruments.

The role of states in the UN process on small arms also deserves further analysis. The global membership of the UN and the consensus-bound nature of negotiations posed evident challenges. There existed a general consensus among states to address illicit small arms in, at a minimum, the context of armed crime. Such a ‘crime frame’ is reflected in the UN Firearms Protocol. There was also a common awareness that illicit small arms were trafficked into conflict zones and that states in post-conflict situations could benefit from international assistance in the clear-up of small arms accumulations. Indeed, this awareness reflected the success of UN groups and non-governmental

control advocates in encouraging states to address the small arms challenge as a humanitarian and conflict prevention issue. But there existed important differences in relation to the norms and their maturity that states were willing to accept in order to combat illicit small arms in the context of armed conflict.

States from sub-regions including South-East Asia and the Middle East generally supported a restrictive approach that excluded or limited norms in areas touching on national security interests and military sensitivities (see below). In contrast, states from Latin America and sub-Saharan Africa often favoured a more comprehensive approach to the small arms issue. Some states in these sub-regions faced armed insurgencies and thereby experienced illicit small arms as direct threats to their national stability and security. They consequently had an interest that arms manufacturing and exporting states ensured that small arms did not fuel irregular armed groups in their territories. States in these sub-regions also often had an interest in obtaining international technical and financial assistance to combat illicit small arms in post-conflict situations and to modernise their national control structures.

Other states that supported a comprehensive approach to small arms control included EU member and associated states. One of their motivating factors was the acceptance of a 'special' responsibility as arms exporting states to ensure that their arms were not used in illegal armed violence and to support conflict prevention abroad (see chapter five). By supporting a comprehensive approach, EU states could portray themselves as actively working towards the 'moral' imperative to counter the humanitarian consequences of illicit small arms. In turn, this responded to consistent calls by European parliaments, NGOs, and publics on their governments (see chapter five). As donor states, they were also willing to support conflict prevention measures



and improvements in small arms control structures abroad with financial and technical assistance.

Individual states took leadership roles on specific control issues within this context of multiple and often conflicting interests. One example is the French-Swiss initiative on tracing illicit small arms. Canada and Switzerland commissioned research on reliable marking systems in the late 1990s in response to recommendations by the 1997 UN panel and 1999 UN group to consider the issue as a control measure (UNGA, 1997, p. 23; and UNGA, 1999a, p. 19). Switzerland also hosted a workshop on the issue with governmental and non-governmental experts in February 1999 to inform the UN group that reported on small arms in 1999 (UNGA, 1999a, p. 19, para. 91). Switzerland continued its efforts as part of the French-Swiss initiative that included a series of informal workshops in 2000 and 2001 to identify minimum standards for an international mechanism for tracing illicit small arms. The outcome documents outlined key elements of a “possible international agreement to enable states to identify and trace lines of supply” of illicit small arms (French-Swiss Initiative, 2000; and 2001, p. 3).

The engagement by individual governments with the issue legitimised it on global agendas and garnered support for the later decision to develop the International Tracing Instrument. Non-governmental policy experts were an integral part of the process since its conception. Individual experts involved in the 1997/99 UN panel and group and in close contact with interested governments successfully encouraged these governments to take up the tracing issue. Participating in strategic discussions with interested governments, they helped define the approach to the issue. This approach focused on the technical issue of reliable marking as an entry point for later debates on the

politically more sensitive issue of cooperation in tracing of conflict small arms (Greene, interview, 2008). Non-governmental experts from both arms control and pro-gun groups also provided technical expertise on marking processes and standards in a variety of workshops, UN meetings and publications since the late 1990s. This technical advocacy was subsequently supplemented with more public advocacy by IANSA members in the development of the International Tracing Instrument.

Another example is the Norwegian and later Dutch-Norwegian initiative on small arms brokering that included the commissioning of research and workshops for interested governments in the late 1990s and early 2000s (see below). Again, individual non-governmental experts contributed to the emergence of the initiative by successfully encouraging the Norwegian and other governments to pursue the brokering issue. Non-governmental researchers also provided credible and detailed information on the challenge and possible solutions (see below). They thereby educated interested governmental officials and enabled them to promote further steps on brokering at the inter-governmental level (Wood, interview, 2004). The close cooperation with non-governmental experts allowed officials to pursue technically informed policies to strengthen small arms control. The governmental initiatives on tracing and brokering expressed the interests of these governments to portray themselves as active proponents of international peace building and conflict prevention.

#### **4.1.d Analysis**

Non-governmental policy experts and advocates encouraged and actively participated in the UN process on small arms since its emergence. Although their access remained restricted in formal negotiations, non-governmental actors remained actively engaged with interested governments throughout the process. Together with UN agencies, they

played important roles in the identification of and awareness-raising about the small arms challenge. By providing technically accurate and in-depth policy analyses on small arms, non-governmental actors informed governmental representatives, facilitated policy discussions, and contributed to the setting of the UN agenda. One example in this context is the extension of the mandate of a 1999 UN group on brokering controls to include brokering-related controls (see below). This directly responded to arguments by non-governmental members of the epistemic community on brokering controls that effective controls needed to be underpinned by comprehensive approaches (Wood, interview, 2004). Non-governmental policy experts also provided leadership in the conceptual development of control norms that is, the identification of the basic principles and the more specific measures required to combat illicit small arms. Governmental officials and representatives of the United Nations who participated in the UN process on small arms and were interviewed for this research confirmed the importance of non-governmental actors in this respect.<sup>9</sup>

An interesting case is presented by the role of public advocacy and activism by non-governmental actors on small arms control. IANSA and the public advocacy that its members engaged in since the late 1990s emerged and took place within a state-set framework. As argued by Garcia, NGOs “assumed great importance as leaders in the normative change processes” in the issue area of landmines. In contrast, “[t]he NGO activist side of small-arms norm building took a relatively long time to develop ... [The small arms issue] was first a scholar-led subject, then became state-led, and then NGOs followed the states” (Garcia, 2006, p. 40). At the same time, public advocacy made important contributions to popularising the small arms issue among parliamentarians and the public in various states and sub-regions. This raised domestic and trans-national

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<sup>9</sup> Personal interviews with about 16 members of governmental delegations and non-governmental organisations who participated in the UN process on SALW in the early and mid 2000s, 2003-05.

pressure on governments to pursue comprehensive control policies (see chapters five and six). Further, there exists at least one example for the provision of moral leadership by NGOs in conventional arms control developments, that is, the NGO advocacy and activism on an international arms trade treaty (ATT) since the early 2000s. Indeed, in the views of involved non-governmental experts and government officials, the global ATT campaign by NGOs was critical to encouraging states to vote in favour of steps at the UN in 2006 towards the development of such a treaty (see below).<sup>10</sup>

The analysis of the role of non-governmental advocacy also provides insights into the conditions that facilitated non-governmental efforts to shape and influence the development of global control norms. One element was the amenability of the small arms issue in the context of armed conflict to moral advocacy. Research by normative entrepreneurs established a clear link between poor national controls, illicit small arms, and violations of international humanitarian law. Other elements were the provision of timely, credible, and policy-relevant information by non-governmental actors as well as their access to policy debates and continued dialogue with interested governments. A key aspect in this regard was the emergence of coalitions of the willing, that is, policy coalitions between interested small and medium states, UN agencies, and non-governmental advocacy actors. The participation in the coalitions allowed advocates to engage in sustained strategic discussions about the scope for normative developments and, in the views of participants, to provide critical inputs into the relevant processes.<sup>11</sup> A further condition that facilitated non-governmental efforts was a willingness of many policy experts to distinguish between politically feasible aims on the one hand and more ambitious and morally desirable aims on the other hand. The views of non-governmental actors sometimes differed in relation to this distinction which led to

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<sup>10</sup> Ibidem.

<sup>11</sup> Ibidem.

various debates and compromises between these actors in the context of joint advocacy in the UN process on small arms (see below).

In summary, the continued and in-depth engagement of states with non-governmental advocacy actors is significant inasmuch as it demonstrates that the development of global small arms norms was not the exclusive domain of states. Non-governmental advocates cannot be credited with providing an overall leadership role in normative developments on small arms to the extent to that they played such a role in relation to the ban on anti-personnel landmines. But the research and advocacy efforts of non-governmental actors made critical contributions to the conceptual development of possible small arms control measures. Individual policy experts were also integral members of policy coalitions that strategically identified and pursued strengthened global control norms. These roles of non-governmental actors in relation to small arms norms are similar to those that neo-liberal institutionalism and constructivists frequently identify in relation to non-governmental advocacy on for example environmental and human rights norms (see chapters one and two). From a constructivist perspective, the analysis suggests that non-governmental advocacy actors can be key actors in the promotion of normative developments even in the security sphere.

#### **4.2 Impact of non-governmental advocacy**

The impact of non-governmental advocacy on governmental choices in policy debates on control norms can be measured by contrasting the positions and norms that were advocated by these actors with those that states adopted. It is not the aim here to argue that states adopted certain policy positions and norms solely because they were advocated by non-governmental actors. Rather, states with 'progressive' policy agendas (see below) and non-governmental control advocates often shared basic policy aims.

Further, non-governmental actors exerted their influence as only one of the members of policy coalitions. Nevertheless, comparing what was advocated with what was adopted allows for determining whether non-governmental actors had at least a potential impact on governmental choices. The analysis also allows for further investigating the significance of non-governmental advocacy on changes in state interests in relation to small arms control. The first subsection looks at the impact of non-governmental advocacy in the context of the 2001 UN Programme of Action. The second sub-section considers the impact of non-governmental advocacy in the areas of tracing illicit small arms, brokering controls, and arms transfer standards since 2001.

#### **4.2.a The UN Programme of Action on small arms**

The development of the 2001 UN Programme of Action dates back to substantial negotiations between states in the 1998-99 UN group of governmental experts on illicit small arms. The 1999 report of the group consolidated a global consensus that illicit small arms posed challenges in the context of both armed crime and conflict. The outlines of the instrument were further refined in debates between states at three UN preparatory committee meetings in 2000 and 2001. The negotiations of the instrument were underpinned by divergent views between states about the adequate scope and binding character as well as the contents of the instrument. Several states aimed for an international instrument that would strictly focus on the illicit trade in small arms and not touch on issues perceived by them to conflict with the principles of non-interference in the domestic affairs of sovereign states or a state's right to self defence. China supported measures to strengthen the national legislation on small arms control but argued that such measures should not interfere with the sovereign right of states to produce, hold and transfer small arms. Other states that argued for a 'limited' policy

agenda include Egypt, Russia, Algeria, Pakistan, Syria, Cuba, and Israel (Berkol, 2001, p. 8-9). As suggested previously, the national security interests of these states reflect traditionalist expectations about state behaviour in relation to policy issues that touch on military sensitivities. The USA also argued for a limited policy agenda albeit for sometimes different reasons (see below).

In contrast, many European, Latin American, and sub-Saharan African states promoted a 'progressive' policy agenda and emphasised that the mandate for the conference was the illicit trade in small arms *in all its aspects*. The negotiated programme was therefore also to touch on the legal trade in small arms and strengthen the mechanisms to prevent diversions of legally held and traded small arms into the illicit sphere. Non-governmental control advocates shared many of the aims of states with progressive agendas and strongly encouraged these states to further pursue comprehensive policy aims. Their underlying argument was that the humanitarian consequences of poor small arms controls necessitated that states accept greater constraints in their national practices on production, holding, and transfers. At the same time, there existed differences in views between non-governmental control actors in relation to the promoted positions and norms as well as between non-governmental actors and states with progressive policy agendas (see below).

Contested issues during the negotiations of the UN Programme of Action included the types of small arms that should be covered by the instrument's scope, the instrument's binding character, its follow-up mechanisms, as well as a range of individual control issues. The debates on these issues are outlined below. The overview also presents the positions of non-governmental control advocates during the debates and considers their success in seeing their positions reflected in the UN Programme of Action.

#### *4.2.a.1 Nature and scope of the instrument*

One issue of continued debate during the negotiations of the UN Programme was the types and scope of equipment that should be covered by the instrument. The UN panel of experts that reported on small arms in 1997 provided a definition that listed the types of equipment that were typically used in the conflicts the UN had to deal with. The list includes small arms such as revolvers, sub-machine guns, and assault rifles, light weapons such as heavy machine guns and grenade launchers, and ammunition and explosives such as cartridges for small arms and hand grenades (UNGA, 1997, p. 11-12, para. 26). A 1999 report by a UN Group of Experts on the problem of ammunition and explosives affirmed the critical link between small arms and their related ammunition.<sup>12</sup> The group affirmed that “[a]mmunition and explosives are an inseparable part of the problem of the excessive and destabilizing accumulation, transfer and misuse” of small arms (UNGA, 1999b). The group recommended “that the problem of ammunition and explosives be fully integrated into the [...] United Nations activities” on small arms (*ibidem*, p. 17, para. 109a).

Many states supported the position that the UN Programme should cover a comprehensive range of small arms, that is, the small arms, light weapons, and ammunition that were listed in the 1997 report of the UN panel of experts. Likewise, non-governmental arms controls advocates supported the adoption of an instrument that would cover small arms, light weapons, and their related ammunition. There was opposition, however. The US delegation favoured a more restrictive definition that would focus on small arms that were made to military specifications but exclude ‘civilian’ small arms used for hunting, self defence, or sport shooting activities. The

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<sup>12</sup> The group was established in follow-up to a recommendation by the UN group of experts that reported on SALW in 1997 (UNGA, 1997, p. 24, para. 80.m).



adoption of such a restricted definition was strongly supported by non-governmental pro-gun groups (Berkol, 2001, p. 17-25). The US opposition to ammunition norms reflected the interests of a domestic constituency (pro-gun groups) and concern about the economic implications of ammunition controls. Other states with a restrictive agenda also opposed ammunition controls as an undue interference in their national security interests.

The compromise solution in the UN Programme was to avoid the question of definition altogether. That is, the programme simply refers to small arms and light weapons without naming ammunition, listing the types of equipment, or providing a technical description of the equipment. On the one hand, the solution fell short of what states with progressive agendas and non-governmental control advocates had argued for. The outcomes demonstrate the capacity of states with restrictive agendas and a great power, the USA, to block normative developments in the field of ammunition control. On the other hand, the solution avoided the limited approach favoured by the US and the explicit exclusion of 'civilian' small arms from the scope of the instrument. Importantly, it consolidated the understanding that illicit small arms in the context of conflict and violations of humanitarian law required constraints in national flexibility in the control of state-owned small arms. Non-governmental control advocates contributed to this consolidation by the continuous provision of credible knowledge on the link between illicit and previously state-owned small arms and the tremendous human suffering by poor controls. They thereby exerted moral leverage on and sought to convince governments to adopt a comprehensive approach to small arms control.

#### *4.2.a.2 Binding character of instrument and follow-up mechanisms*

Other issues of debate during the negotiations of the UN Programme were the binding character of the instrument and its follow-up mechanisms. Canada, Norway and EU member states were supportive of the development of legally binding global norms on combating the illicit small arms trade and international cooperation on small arms control (*ibidem*, p. 8). Many states also supported the position that the negotiated instrument should provide a basis for future developments in global controls on small arms. Non-governmental control advocates shared and promoted the aims of adopting a legally binding instrument that could be further developed in future. As argued by the Biting the Bullet project in 2000, the instrument should “be a flexible and organic agreement that develops over time, and it is important that the Document of Agreement establishes mechanisms to facilitate this” (Biting the Bullet, 2000a, p. 14).

Several states opposed these positions. States that included China, Japan, the Russian Federation, Algeria and Pakistan raised concerns about establishing any process or instrument that would impose legal standards on their national systems (Berkol, 2001, p. 8). The USA opposed the adoption of a commitment to “a mandatory Review Conference [...] which serves only to institutionalize and bureaucratize this process.” The USA proposed that states decide on ad hoc meetings that would respond “not to an arbitrary timetable, but specific problems faced in addressing the illicit trade” in small arms (Bolton, 2001).

The eventually adoption positions in the UN Programme indicate that states with progressive policy agendas and non-governmental control advocates had mixed results in seeing their policy aims realised. The UN Programme was adopted as a politically binding instrument. Non-governmental advocacy in support of a legally binding instrument was, consequently, unsuccessful. This reflects traditionalist expectations that

non-governmental advocates are unlikely to be successful in their advocacy of highly binding norms in the security sphere. Of interest is the difference in views between non-governmental advocacy actors on the importance of legally binding norms. Public advocacy organisations like IANSA attached great importance to a legal instrument. In contrast, non-governmental policy experts and members of epistemic communities held a different view in strategic discussions with partner states. They argued that legally binding norms were desirable but not essential if compared with the importance of follow-up mechanisms to the UN Programme (Greene, interview, 2008). Indeed, non-governmental advocacy was successful in this respect. The UN Programme stipulates that states are to hold review meetings every two years and a review conference in 2006. Again, non-governmental advocates contributed to this outcome by encouraging and supporting interested states in the argument that the small arms challenge required the institutionalisation of the UN process that the USA initially opposed. The contribution of advocates included the continued provision of detailed information that identified the complex challenges of small arms control and the requirement of an instrument that could be further developed.

#### *4.2.a.3 Individual control issues*

The debates between states on the nature of the UN Programme were complemented with debates on a range of individual control issues. Indeed, the recommendation to implement effective demobilisation and reintegration programmes in post-conflict situations was one of the few issues on that states agreed without much debate in the UN Programme (Berkol, 2001, p. 13). The following part reviews the origins and contents of some of the debates as well the success of non-governmental advocacy in effectively promoting norms in the debates. The review allows for a subsequent

analysis of the success of non-governmental advocates in light of traditionalist expectations on the potential policy impact of non-governmental actors.

## **I Tracing illicit small arms**

There is a long-standing recognition that marking, record-keeping, and cooperation in tracing illicit small arms can assist in preventing illicit small arms trafficking. Common minimum standards in the issue area are established in the 1997 OAS Firearms Convention (see chapter three). The UN panel on small arms that reported the same year reflected this recognition and recommended that the UN should initiate a study on “[t]he feasibility of establishing a reliable system for marking all such weapons from the time of their manufacture” (UNGA, 1997, p. 23, para. 79.1.i). The 1999 UN group on small arms reaffirmed the recommendation that the UN initiate a study on the issue (UNGA, 1999a, p. 20, para. 102). The 1999 UN group that reported on ammunition and explosives provided a detailed account of the options for ammunition marking and recommended that the marking of ammunition should be considered as part of the future UN study on small arms marking (UNGA, 1999b, p. 12-13). As shown above, individual governments and non-governmental policy experts further garnered support for multilateral norms on tracing illicit small arms in the context of especially the French-Swiss initiative on tracing.

Many American, European, and sub-Saharan African states supported the adoption of common minimum standards on small arms marking, record-keeping, and cooperation on tracing during the negotiations of the UN Programme. They also supported a commitment to the future development of an international tracing instrument in the UN Programme (see Michel, 2001). Non-governmental arms control advocates shared these policy aims. They lobbied governmental delegations at the UN

preparatory committee meetings and the 2001 UN conference and distributed a range of research and advocacy reports. The Biting the Bullet project called on states to use the 2001 conference to “establish a set of international principles and standards on marking, record-keeping and tracing of [small arms and] launch negotiations for a detailed (and preferably legally binding) tracing agreement” (Biting the Bullet, 2001c, p. 22). Similarly, IANSA called for an international and legally binding instrument on tracing illicit small arms.

There existed differences in the views of states regarding the relevant norms and measures that should be adopted as well as between states and non-governmental arms control advocates. First, there was a continued concern by China and Arab League member states that any international tracing mechanism should strictly focus on the illicit small arms trade. They argued that any such mechanism should not be used as a measure to promote transparency in the legal small arms trade. The Swiss delegation at the 2001 UN Conference took account of this opposition and affirmed that it was *not* the objective of the French-Swiss initiative “to make possible comprehensive monitoring of the legal sources and flows of small arms” (Kunz, 2001). This was disappointing for non-governmental advocates and public advocacy organisations who argued for comprehensive controls on both legal and illicit small arms. At the same time, individual non-governmental policy experts closely involved with the initiative strongly encouraged the Swiss delegation to make this clarification (Greene, interview, 2008). They viewed political buy-in from China and other states opposed to constraints on the legal small arms trade as a strategic priority in the pursuit of multilateral norms on tracing. Building on the established support for tracing in the context of armed crime, they had advised interested governments to pursue the marking of small arms as an entry point into the issue (see chapter three). The experts now suggested the

adoption of at least basic norms in the sensitive issue of tracing state-owned small arms to provide a basis for future developments. They supported their argument by pointing towards the existing standards in relation to tracing in a crime context as well as regional norms on conflict tracing.

Second, states disagreed about the specificity of the norms that should be adopted in the area of tracing illicit small arms. For example, states agreed that the markings should universally identify the country of manufacture. Many states and non-governmental controls advocates argued that further markings on the producer and the serial number should also be universally identifiable. Some states opposed this proposal. China had already opposed this proposal in the framework of the negotiations of the 2001 UN Firearms Protocol. The Chinese delegation argued that universally identifying manufacturer and serial numbers would divulge “sensitive information on production levels and sources of manufacture” (Bondi and Keppler, 2001, p. 4, fn. 16). Requiring states to divulge such information would, therefore, constitute an unacceptable infringement of national security and sovereignty. Third, some states that included China and the USA opposed any commitment to the development of an instrument on tracing illicit small arms.

The compromise that was adopted in UN Programme of Action stipulates that small arms should be marked so as to identify the country of manufacture and “enable [...] the national authorities of that country to identify the manufacturer and serial number”. China and other states successfully prevented therefore the adoption of the norm that markings should universally identify the manufacturer and the serial number (UN, 2001, sect. II.7). States with progressive policy agendas and non-governmental arms control advocates also failed to effectively encourage the adoption of a commitment in

the UN Programme to the future development of an international tracing instrument. Rather, any commitment was watered down to recommending a UN study “for examining the feasibility of developing an international instrument to enable States to identify and trace in a timely and reliable manner illicit small arms and light weapons” (*ibidem*, sect. IV.1.c). At the same time, the UN Programme establishes a clear commitment of states to cooperate in the tracing of illicit small arms in the context of armed conflict. Further, the recommendation for a study kept the issue on the UN agenda. This reflected positions by states with progressive policy agendas and non-governmental control advocates at least partially.

Importantly, the outcome demonstrates the success of non-governmental policy experts in the strategic pursuit of promoting the establishment of norms in the militarily sensitive issue of cooperation in tracing conflict arms. They advised interested states on the strategic priorities in the process since the late 1990s. This included the identification of essential normative elements as well as those that could be compromised on while still allowing for achievement of the overall normative goal. Their consultancy also included the provision of technically accurate information to inform the process. They therewith established themselves as integral partners in a policy coalition working towards the establishment of greater constraints in an area directly affecting national flexibility in the security sphere. The importance of non-governmental policy experts in this regard is not expected from a traditionalist perspective.

## **II Brokering controls**

Concern about the involvement of arms brokers in illicit arms trafficking is not a new phenomenon. Alarmed by the involvement of German left-wing terrorists in illicit

international arms transfers, the Federal Republic of Germany incorporated brokering controls into its War Weapons Control Act in 1978 to avoid becoming a centre for international arms trafficking (Pottmeyer, 2001, p. 1). Sweden introduced a licensing requirement for the brokering on its territory of arms between parties in third countries in the 1980s (Anders, 2004, p. 27). Further states adopted brokering controls on a unilateral level in the 1990s, often in response to negative national experiences with regards to uncontrolled arms brokering. In the US, mounting frustration among officials about brokers who ‘were almost thumbing their noses at the US government because they knew they couldn’t get punished’<sup>13</sup> led to the inclusion in 1996 of brokering controls in the US Arms Export Control Act. Nevertheless, there were very few states that had explicit controls on arms brokering in their national legislation by the 1990s.

Within the UN system, calls for brokering controls emerged in the mid 1990s. The UN Disarmament Commission identified private arms dealers as significant actors in illicit arms transfers in 1996. It urged states to “maintain strict regulations on the activities of private international arms dealers and cooperate to prevent such dealers from engaging in illicit arms trafficking” (UN, 1996b, p. 18, para. 39). The 1997 UN panel of governmental experts on small arms recommended that the UN initiate a study on the feasibility of restricting the arms trade to dealers authorised by states (UNGA, 1997, p. 17 and 23). A consultative UN meeting considered that such a study was feasible and recommended to expand the study’s scope to also cover brokers, transportation agents and financiers in May 1999 (UNGA, 1999a, p. 19 and 1999c). The UN group of governmental experts on small arms endorsed the recommendations in its report of August 1999 (UNGA, 1999a, p. 20, para. 103).

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<sup>13</sup> Interview with U.S. State Department official, Washington, D.C., March 29, 2000, quoted in Bondi and Keppler, 2001, p. 25.



The importance of controlling small arms dealers and brokers was underlined in 2000 with the publication of UN reports on sanctions violations in Southern and Western Africa. The reports identified the undesirable role of brokers in illicit arms transfers and raised international awareness about the issue (UN, 2000a and 2000b). A UN group of governmental experts was eventually established in 2000 to consider the feasibility of restricting arms brokering to government-authorised dealers. The group presented its report in May 2001. The report identifies detailed policy options for governments to combat undesirable arms brokering, transportation agents and financiers (UNGA, 2001c).

Non-governmental arms control experts identified uncontrolled arms dealing and brokering as a major challenge in arms controls and drew the attention of governments to the need for greater control efforts in this area since the mid 1990s. Lora Lumpe, member of the epistemic community on conventional arms, already argued that private arms dealers were implicated in illicit arms transfers at non-governmental expert meetings in 1994 (Lumpe, 1994, p. 3). Non-governmental experts advocated brokering controls during their presentations to the UN panel and group that reported on small arms in 1997 and 1999 as well as to the UN group of governmental experts that reported on small arms brokering in May 2001. The consultant to the UN group that reported in 2001 worked in a Canadian arms trade research NGO (UNGA, 2001c, p. 5). Further, non-governmental experts had been the driving force behind the later adopted recommendation by the UN consultative meetings in May 1999, that is, to extend to study by the UN group of governmental experts from dealers to also brokers, transport agents, and shipping agents (Wood, interview, 2004).

Non-governmental advocacy efforts were sustained by an increasing number of research and advocacy reports on brokering controls since the late 1990s. One prominent example is *The Arms Fixers – controlling the brokers and shipping agents*, co-authored by a member of the epistemic community on conventional arms and published in February 1999. The investigative report provided an in-depth account of how unscrupulous brokers exploited the lack of controls on their activities (Wood and Peleman, 1999.) The report and other reports that were published by non-governmental advocates in 1999/2000 provided the first detailed outlines of the measures and mechanisms required to effectively combat undesirable arms brokering.

Non-governmental experts also promoted the reports and their findings at multilateral meetings that fed into the UN process. An example is the consultative meeting on small arms control that was hosted by the Norwegian Ministry of Foreign Affairs in Oslo in December 1999. Norway, which had also financed the report *The Arms Fixers*, organised the meeting as an occasional forum for discussions among interested governments on possible global measures to counter the illicit trade in small arms. Non-governmental advocates urged the governments at the meeting to support further efforts to combat illicit small arms brokering (Norwegian Ministry of Foreign Affairs, 1999). The outcome document of the meeting, containing a call for brokering controls, was later circulated in the framework of the UN preparatory committee meetings (UNGA, 2001b, p. 4, para. 11).

Many states supported the adoption of strong national controls on small arms brokering as well as a commitment to the development of an international instrument on small arms brokering during the negotiations of the UN Programme. The states included European states that had already committed to considering establishing national

controls on brokering in the framework of the 2000 OSCE Document on small arms (see chapter 3). Belgium, speaking on behalf of the EU member states and associated states, called for an international and legally binding instrument to control brokers, financiers, and shipping agents at the 2001 UN conference on (see Michel, 2001). Several sub-Saharan African states, while not necessarily calling for comprehensive brokering controls, supported a restriction of small arms dealing to only state-authorised arms dealers.

Non-governmental arms control advocates supported a progressive policy agenda on brokering controls with publications by the Biting the Bullet project and the non-governmental think tank Fund for Peace (Biting the Bullet, 2001a; Bondi and Keppler, 2001; and Austin, 2001). The Fund for Peace also published and promoted a *Model Convention on Arms Brokering* with the aim to stimulate and foster governmental debate in July 2001. The model convention includes a comprehensive definition of arms brokering, a wide jurisdictional scope, detailed provisions for the registration of brokers and the licensing of their activities when at home or abroad, criteria when licenses are to be prohibited, and sanctions for those violating relevant legislation (Fund for Peace, 2001). IANSA endorsed the model convention and advocated that states adopt a legally binding instrument on small arms brokering at the global level (IANSA, 2001, p. 5).

While supported by many states, other states remained unconvinced about the need for controls on the activities of arms brokers at the national level. China and the Russian Federation argued that their national legislation does not authorise private individuals to engage in arms transfer activities. They argued that there was no need for any changes in their national legislation in this respect (Berkol, interview, 2004). The USA did not oppose language that encouraged states to control small arms brokering,

but it was among the states that opposed a commitment in the UN Programme to the future development of an international instrument on small arms brokering.

The eventually adopted UN Programme encourages states to adopt brokering controls at the national level, but it does not refer to controls of financial and shipping agents or controls on brokers operating from abroad. Further, the UN Programme does not commit states to develop an international instrument on brokering or to consider the feasibility of developing such an instrument. Rather, it only recommends that the UN and states continue to “consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering” in small arms (UN, 2001, sect. IV.1.d). This means that non-governmental arms control advocates only had a partial success in seeing their policy aims on brokering controls realised in the UN Programme.

Notwithstanding, the integral part of non-governmental policy experts as members of policy coalitions on brokering controls is not necessarily predicted by traditionalists. Non-governmental experts made significant contributions to the development of global brokering norms by raising awareness among governments and educating them on the challenge and control options. Key elements in this regard were the provision of credible and accessible knowledge as well as moral leverage on exporting states. Non-governmental advocates argued that the territories of arms exporting states were used for the arrangement of illicit transfers abroad. This contributed to the tremendous human suffering associated with illicit small arms. European states were increasingly responsive to this leverage since the early 2000s (see chapter five). In contrast, other states such as the Russian Federation and China largely remained resilient to non-governmental pressures.

Further, the leadership role played by individual European governments in promotion of brokering controls critically drew on non-governmental policy expertise and advice on strategic approaches. One strategic priority for policy experts was to encourage exporting states to develop common understandings in the context of the OSCE Document. This was to serve as a stepping stone towards the development of global norms. Individual experts also advised interested governments on essential elements for brokering controls as opposed to desirable ones. The distinction between such elements was often not made by public advocacy organisations that promoted comprehensive and legally binding norms on arms brokering at the global level.

### **III Transfer controls**

As shown in chapter three, the policy issue of common minimum transfer criteria on conventional arms transfers emerged on the UN agenda in the early and mid 1990s. The permanent members of the UN Security Council adopted common transfer criteria in 1991. The UN Disarmament Commission adopted *Guidelines for International Arms Transfers* in 1996. The issue also appeared in the context of the UN process on small arms. One element in the negotiations of the UN Programme was the adoption of explicit criteria that states should respect when assessing authorisations for small arms transfers. A related element was a restriction or ban on small arms transfers to non-state actors abroad who were not authorised to acquire small arms by the state in which they operate. Relevant non-state actors include rebel and insurgent groups that receive military assistance and equipment from foreign sponsors.

Non-governmental control advocates supported the establishment of global norms on transfer criteria that were based on the respect for international law, including international humanitarian law, and respect for human rights. A group of Nobel peace

prize laureates had drafted an international treaty on arms transfer standards in the mid 1990s. The proposed treaty was to build on the common transfer standards that the permanent members of the UN Security Council adopted in 1991 and strengthen respect for international law in arms transfer decisions (Sánchez, 2001). Non-governmental arms control advocates raised awareness of this proposal during the UN negotiations of the UN Programme and provided detailed accounts of the specific criteria that states should adopt and respect in their export decisions. Public advocacy oriented NGOs went further in their calls than even states with progressive agendas by calling for an international treaty on arms transfers.

Non-governmental control advocates also supported a restriction on small arms transfers to non-state actors. In addition, they pointed towards the ‘ignored’ issue of strictly regulating transfers, possession, and use of small arms by private security forces. Non-governmental control advocates argued that one feature of the changing nature of conflict in the 1990s was the “presence of mercenaries and the emergence of private companies contracted to provide military and security services.” Advocates also argued that “the activities of mercenaries and private military and security companies can contribute to small arms proliferation and misuse” and should, consequently, be strictly controlled (Biting the Bullet, 2001d, p. 2).

Many states supported the adoption of common minimum standards for exports and transfers of legal small arms as part of the UN Programme. They also supported a firm commitment to the establishment of common minimum export criteria at the global level. Supportive states argued that there is an inextricable link between the illicit and the legal trade in small arms and that states should employ strict export criteria to avoid that legally transferred small arms are diverted and misused (Biting the Bullet, 2001b, p. 20). Specifically, they supported the position that applications for small arms exports

should be assessed according to strict national criteria. Supportive states included member states of the OSCE and the EU and, therewith, states that had already adopted common export criteria for arms transfers at regional and trans-regional levels. They also included sub-Saharan African states. States from the region further pointed towards the potentially destabilising effects of covert arms supplies to non-state actors and argued for stringent restrictions on such transfers (Berkol, interview, 2004).

The calls for comprehensive global norms on small arms transfers were opposed by states including China, Cuba, and Arab League member states as an interference in their sovereign rights to transfer small arms. They also opposed a commitment in the UN Programme to the future establishment of common export criteria. The USA strictly opposed global standards to restrict transfers of small arms to non-state actors. Arguments by the USA included that such restrictions would interfere with the legal trade in ‘civilian’ small arms and could obstruct oppressed non-state actors to defend themselves against regimes committing genocide (Bolton, 2001).

The formulation on that states agreed in the negotiations of the UN Programme was a compromise. The UN Programme refers to ‘strict national regulations’, ‘responsibilities of States under relevant international law’, and the risk of diversion in the context of state decisions on applications for small arms export authorisations (UN, 2001, sect. II.11). The UN Programme does not, however, mention export criteria or commit states to the establishment of common minimum export criteria. The USA also prevailed with its position that the UN Programme should not contain any norms on restrictions on small arms transfers to non-state actors. The outcome suggests that non-governmental control advocates had only partial success in promoting the mention of small arms export criteria and the respect for international humanitarian law in the UN Programme.

Non-governmental control advocates were not successful in promoting a commitment to the negotiation of an international treaty on arms transfers or of restrictions of transfers to non-state actors.

The outcome reflects traditionalist expectations inasmuch as non-governmental actors are considered unlikely to have a significant policy impact in areas directly affecting national security interests. The principal constraint on the development of more mature norms on transfer criteria was the consensus-bound nature of the negotiations that allowed a small number of states to block more comprehensive steps. Non-governmental advocates failed to successfully exert moral leverage on states such as China and Arab League member states to accept a high level of responsibility and constraints in their national arms transfer decisions.

Nevertheless, even the adoption of limited norms on transfer criteria is notable within the structural constraint of consensus-bound negotiations. Non-governmental policy experts promoted the adoption of at least limited norms as a strategic priority in the UN Programme to establish a foundation for future developments. That is, the limited norms would open the way for and facilitate future efforts to further define international responsibilities and diversion risks. Also, the support of EU states for this position was largely inspired by the impact of non-governmental advocacy on export criteria in the EU since the mid 1990s (see chapter five).

#### **IV Stockpile controls and surplus management**

Norms on small arms stockpile controls were already raised by the UN panel of experts that reported in 1997. The panel recommended that states should “ensure the safeguarding of [state-owned small arms] against loss through theft or corruption, in particular from storage facilities”, “exercise restraint with respect to the transfer of the



surplus of small arms”, and “consider the possibility of destroying all such surplus” small arms (UNGA, 1997, para. 79.e-f). The UN group that reported on small arms added that states should exchange information on national stockpile management practices. The group further recommended that donor states should assist other states, at their request, in the management, collection, safe storage, and destruction of surplus small arms (UNGA, 1999a, paras. 96 and 111). The adoption of the recommendations, which was strongly encouraged by non-governmental policy experts, further legitimised and established the issue on the UN agenda.

States from Europe and elsewhere supported the development of specific norms on small arms stockpile management and surplus destruction at the 2001 UN Conference. They pointed to relevant standards in the 2000 OSCE Document on small arms as a model for possible global norms. Non-governmental arms control advocates supported the positions of states with an ambitious policy agenda. A detailed Biting the Bullet briefing urged states to consolidate and strengthen norms on small arms stockpile security and management and to adopt norms on the identification and destruction of surplus small arms. The briefing provided comprehensive proposals for each of the recommended subsidiary norms to assist states in their negotiations (Biting the Bullet, 2000b).

Most states agreed on the need to include norms on stockpile management in the UN Programme but they differed in their views about the specificity of the norms. Various states that included China and Arab League member states opposed a definition of surplus arms and the listing of indicators for such arms. They argued that the identification of national requirements and of surplus arms was the exclusive domain of national authorities and not a matter for global standards (Berkol, interview, 2003). In compromise, states agreed to norms that cover inventory controls and security of

stockpiles, regular reviews of stocks to identify surplus arms, and the responsible disposal of such arms, preferably by destruction (UN, 2001, II, paras. 17-18). But the UN Programme does not provide a definition of surplus arms or indicators to identify surplus arms and thereby excludes elements that raise military sensitivities.

The outcome demonstrates that, while advocacy efforts on elements such as inventory controls and security measures were successful, advocacy efforts to promote norms on surplus identification and destructions were only partially successful. The comparatively high level of policy impact of non-governmental advocacy in relation to stockpile controls is not expected from traditionalist perspective. Non-governmental policy experts failed to change perceptions of reluctant states in relation to especially surplus arms. Nevertheless, experts made significant contributions to the emergence of norms on stockpile controls through the facilitation of multilateral policy coalitions.

Specifically, non-governmental policy experts educated Western governments about the challenges of effective stockpile controls even in industrialised states (see *Biting the Bullet*, 2000b). Further they exerted moral pressure on Western states to offer donor assistance to interested states. Simultaneously, they encouraged individual developing states to express their interest in the possibility of obtaining donor assistance to modernise and strengthen their national stockpile controls. This strategy was complemented with the direct engagement by non-governmental policy experts with the delegations of reluctant states. Policy experts sought to convince these states that the advocated norms did not aim to restrain their national flexibility but to allow interested states in obtaining donor assistance.

#### *4.2.a.4 Analysis*

As shown above, non-governmental actors had mixed results in their advocacy efforts in the context of the 2001 UN Programme. A traditionalist approach predicts a limited policy impact of non-governmental advocacy on highly mature norms that interfere with and constrain national flexibility in militarily sensitive areas. The prediction is borne out especially in relation to public advocacy aims such as the legally binding nature of the UN Programme and commitments to the development of treaties on tracing illicit small arms, brokering, and transfer criteria. There are also examples of limits to the policy impact of technical advocacy efforts. Non-governmental policy experts failed to mobilise sufficient support for the adoption of universally identifiable small arms marking, controls of brokering-related activities, references to humanitarian law in transfer obligations, or surplus indicators. The limits of non-governmental advocacy in these respects illustrate the structural constraint of consensus-bound negotiations at the global level. Individual states remained resilient to pressure by non-governmental advocates and their argument that the advocated positions were required to effectively combat the humanitarian consequences of illicit small arms.

Notwithstanding, the impact of non-governmental advocacy on the UN Programme cannot be rejected as superficial. Non-governmental policy experts enjoyed continued access to strategic policy debates since the mid and late 1990s. As insiders to the debates, they could exert pressure on governments, especially in technically complex issue areas. They encouraged individual governments to take leadership roles and informed and facilitated policy coalitions on specific control challenges by identifying common interests among states. Their efforts also coincided with the interest of many states to present themselves as active supporters of international security and stability. Further, non-governmental experts contributed to the development of control norms

through the identification of entry points for debates and strategic priorities that would be required to ensure an effective UN Programme. Indeed, there exists a high degree of overlap between the strategic priorities advocated by non-governmental experts and the norms that states adopted in the UN Programme. Examples are the consolidation of norms in the areas reviewed above as well as the commitments to follow-up mechanisms to the UN Programme and further steps in relation to norms on tracing and brokering illicit small arms.

The high degree of overlap between the policy aims of non-governmental policy experts and the norms that states adopted is not necessarily expected from a traditionalist perspective. Moreover, states adopted advocated norms in areas directly affecting national security interests. On one level, the outcome demonstrates that at least technical advocacy by non-governmental policy experts can have a clear impact on governmental policy choices in the field of small arms control. On another level, it demonstrates that initially reluctant states could be convinced to accept constraints on their national flexibility. In constructivist terms, states changed their interests and accepted constraints to be recognised as members of a global moral community concerned by the destabilising effects and humanitarian consequences of illicit small arms.

#### **4.2.b Impact of non-governmental advocacy since 2001**

This sub-section reviews the impact of non-governmental advocates in the UN processes on conventional arms and small arms control since the adoption of the UN Programme. Major events in the process were biennial meetings of states in 2003 and 2005 and a review conference on the implementation of the UN Programme of Action in 2006. Further, a UN group of governmental experts agreed that the development of

an international tracing instrument was feasible in a report in 2003 (UNGA, 2003). States subsequently negotiated the International Tracing Instrument in three two-week sessions in 2004-5. The UN General Assembly adopted the instrument in December 2005 (UNGA, 2005b). The debates within the UN processes remained marked by disagreements between states that opposed control measures they saw as undue interferences in their national practices and those that promoted progressive policy agendas. Likewise, non-governmental advocacy actors continued to have direct access to and actively participate in the UN processes. They also continued to inform the process. For example, the Biting the Bullet project and IANSA presented substantial reports that provided critical assessments of the implementation of the UN Programme by states (Biting, the Bullet, 2005 and 2003). The Small Arms Survey published annual research reports that informed both governmental delegations as well as the wider NGO community about the state of play in combating small arms proliferation and misuse (Small Arms Survey, 2001-6).

The sub-section first turns to the policy impact of non-governmental advocacy in the negotiations of the international tracing instrument. It then looks at the impact of non-governmental advocacy in relation to efforts to further develop global norms on small arms brokering controls. It concludes with an assessment of non-governmental advocacy on transfer criteria for conventional arms. The processes on tracing and brokering norms were based on follow-up mechanisms states agreed to in the UN Programme. In contrast, the process towards global standards on transfers of conventional arms developed in parallel to the UN process on small arms in the mid 2000s.

#### *4.2.b.1 Tracing illicit small arms*

The technical nature of the tracing issue restricted the number of non-governmental advocacy actors who engaged in detailed analyses of control challenges and possible solutions as well as the promotion of relevant norms. Nevertheless, control advocates were present at meetings of both the group of governmental experts that reported on the feasibility of a tracing instrument in 2003 and the open-ended working group that negotiated the instrument in 2004-5. Policy experts and advocates also informed governmental delegations with a range of research and advocacy reports on tracing. For example, UNIDIR published a detailed report by policy experts and practitioners on the challenges and requirements for the effective tracing of illicit small arms in 2003 (UNIDIR, 2003). The Belgian research centre GRIP presented a model convention on marking, record-keeping, and cooperation in tracing to inform and assist in the negotiations between states in this context in 2003.<sup>14</sup> The Control Arms campaign published an advocacy report on tracing to inform the negotiations at the open-ended working group in December 2004 (Control Arms, 2004a). In addition, individual policy experts continued to maintain close contacts with interested governments and participated in coalitions of the willing.

There existed a broad consensus among states on the principal elements required to trace illicit small arms by the time that states started negotiations on the International Tracing Instrument in 2004. But two issues in particular caused disagreements, that is, the binding character of the instrument and the scope of equipment that it should cover. Most states supported the adoption of a legally binding instrument that would cover small arms and their ammunition. These positions were also promoted by especially public advocacy actors such as Control Arms and IANSA. Other positions advocated

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<sup>14</sup> The draft convention on tracing small arms is available at <http://www.grip.org/bdg/pdf/g4037.pdf>

by these actors though not endorsed by governments were detailed norms on record-keeping and the registration of all state-owned and legally held civilian small arms. Further, the model convention by GRIP called for the establishment of multilateral mechanisms to trace legal small arms transfers as a pro-active measure to identify small arms diversions. In contrast, the strategic priority identified by non-governmental policy experts was less ambitious. Experts argued that the essential aim of the negotiations should be to secure global consensus on an instrument that established clear commitments in the sensitive area of cooperation on tracing illicit small arms (Greene, interview, 2008).

The comparison between the positions advocated by non-governmental actors and the norms adopted by states in the International Tracing Instrument demonstrates a limited impact of at least public advocacy actors. The US delegation and others opposed and blocked the adoption of a legally binding instrument. They also blocked the inclusion of ammunition in the instrument's scope. Further, states did not adopt detailed norms on the registration of legally held small arms or established multilateral mechanisms for tracing legal transfers. This reflects traditionalist expectations inasmuch as non-governmental advocacy on highly specific and binding norms is considered unlikely to have a significant impact. Nevertheless, the adopted instrument contains the strategic priorities of non-governmental experts who had worked towards the adoption of multilateral commitments to cooperation in tracing illicit small arms since the mid and late 1990s.

The outcome was made possible by a change in the positions of states that initially opposed global norms on tracing state-owned small arms. Specifically, the tracing instrument offered an acceptable compromise to these states between their desires to retain national flexibility in arms controls and to be recognised as members of a moral

community concerned by the effects of illicit small arms. Non-governmental advocates contributed to this outcome by establishing the argument that the tracing of illicit small arms was an essential element to combat the diversion of small arms in violation of international arms embargoes. More broadly, non-governmental advocates facilitated the outcome by identifying existing national marking standards and commonalities between national practices to demonstrate the viability of common marking standards. The common understandings on marking norms were then used as a stepping stone towards the consolidation of norms on cooperation in tracing small arms recovered in the context of armed conflict.

#### *4.2.b.2 Controlling arms brokering*

Following the adoption of the UN Programme, the UN Secretariat hosted several exploratory workshops on small arms brokering controls with governmental and non-governmental policy experts. The workshops paved the way for a UN group of governmental experts that reported on further possible steps to combat illicit small arms brokering in August 2007. The group's report highlighted the profoundly destabilizing effects of illicit brokering and its contribution to violations of UN arms embargoes. Further, the group provided a detailed account of control measures that states were encouraged to adopt at national levels (UNGA, 2007b). The recommendations often built on the regional and sub-regional norms that states had adopted on brokering controls and common understandings that had emerged in the context of the Dutch-Norwegian initiative on brokering controls (Dutch-Norwegian Initiative, 2003). The group was supported in its work by a non-governmental consultant and member of the epistemic community on arms control (UNGA, 2007b, p. 5). Non-governmental advocates also presented research findings and reports at sessions of the UN group and



lobbied governmental delegations at UN meetings on small arms to take further steps on brokering controls.

Many states continued to call for the development of further global norms on brokering controls in the context of the consultations and the biennial meetings on the UN Programme. EU states and others also remained supportive of the development of a global and preferably legally binding instrument on small arms brokering. Non-governmental control actors encouraged this support and pointed to the model convention on brokering controls they had first presented in 2001. As in relation to the tracing issue, they argued that strengthened national controls were an essential element to effectively combat arms embargo violations and violations of humanitarian law committed with illicit small arms. In contrast though, several states continued to oppose the further development of global brokering norms. States including the Russian Federation, China, and Pakistan remained unconvinced of the need to strengthen their national controls. They held that their domestic regulations do not authorise the operations of private arms brokers and that they consequently did not face the challenge of uncontrolled brokering. The USA and other states argued that the global efforts should focus on the implementation of existing commitments to small arms control rather than investing resources into the development of additional global norms.

The debates on global norms on brokering controls shows mixed results for advocacy efforts. States and non-governmental actors who pushed for greater controls were successful in keeping the issue on the international agenda. Also, the 2007 UN group report on brokering made an important advance by providing the first internationally agreed-on definition of brokering and brokering-related activities. Another advance is the definition of illicit brokering as the brokering that violates national laws and regulations or a state's international obligations. At the same time,

control advocates failed to see their main aim realised, that is, the development or at least a commitment to the development of an international instrument on small arms brokering. This is reflected in the UN group's report. It does not consider the feasibility of developing an international instrument on brokering or otherwise recommend the development of such an instrument. The outcome reflects traditionalist expectation by illustrating clear limits to the policy impact of non-government advocacy in relation to highly mature norms at the global level. Specifically, individual states resisted pressures to endorse further global norms as an essential element in the combat violations of arms embargos and humanitarian law. Rather, they continued to value their national flexibility in arms controls over the moral concerns raised by non-governmental advocates.

#### *4.2.b.3 Transfer controls*

States and non-governmental actors who supported the adoption of transfer criteria in the UN Programme continued to advocate further global steps to control legal transfers of small arms in the early and mid 2000s. Individual states that closely interacted with non-governmental policy experts hosted a range of workshops and informal processes outside the UN framework. The UK supported the building of common understandings between states on transfer standards in the context of the Transfer Control Initiative. The process was launched with an exploratory workshop at Lancaster House, London in January 2003. The meeting was attended by participants from various regions and identified a range of factors that could inform national decisions on small arms export authorisations and national guidelines on export controls (Government of the UK, 2003c).

Experts from the non-governmental Biting the Bullet project launched the informal Small Arms Consultative Group process in January 2003. The process included various workshops with governmental and non-governmental policy experts in the USA, European states, and Africa. The process aimed to develop shared understandings on transfers to non-state actors and national guidelines on transfer decisions (Biting the Bullet, 2004). Biting the Bullet sought to thereby complement the UK government-led Transfer Control Initiative. Non-governmental experts also acted as consultants to the Transfer Control Initiative and participated in the meetings that were held as part of the process (Smith, interview, 2005).

Amnesty International, Oxfam GB, and IANSA launched the Control Arms campaign in October 2003. The campaign involved numerous public awareness-raising and lobbying efforts around the globe to promote an international Arms Trade Treaty (ATT). In June 2006, the campaign submitted a petition the UN Secretary General that was supported by over one million people from over 160 countries (Control Arms, 2006). The draft treaty that advocates promote is based on a proposal that was launched by arms control advocates in the mid-1990s. The treaty is to cover all conventional arms and clearly stipulate the obligations of states under international law, including international humanitarian law, when authorising arms transfers. It is to be complemented with the reporting by states on their arms transfers.

The public advocacy by Control Arms and the parallel technical advocacy among governments resulted in the support of an increasing number of states for the development of an international Arms Trade Treaty by the mid 2000s. The success of advocacy efforts was reflected in the passing of a landmark resolution in the UN General Assembly in 2006 that mandated the examination of “the feasibility, scope, and

draft parameters for a comprehensive and legally binding instrument” on the trade in conventional arms (UNGA, 2006). Notably, the resolution was passed by majority voting, thereby allowing for its adoption despite a ‘no’ vote from the USA. Submissions by states of their views on the feasibility of an ATT to the UN Secretary General by August 2007 indicated broad international support for the establishment of common international standards to regulate the arms trade (UNGA, 2007a). This development was strongly encouraged by non-governmental arms control campaigners.

A UN group that reported on the scope for an ATT August 2008 observed that poor controls on the arms trade could contribute to violations of UN arms embargoes and the availability of illicit arms for use in terrorist acts and organised crime. It recommended that the UN further consider the issue on a step-by-step basis but stopped short of making a decision on the feasibility of an ATT or recommending specific standards for such an instrument (UNGA, 2008b). A subsequent resolution mandated the establishment of an open-ended working group on an ATT. The working group was tasked to “further consider those elements in the report of the Group of Governmental Experts where consensus could be developed for their inclusion in an eventual legally binding treaty on the import, export and transfer of conventional arms” (UNGA, 2008).

The developments towards a global treaty on conventional arms transfers cannot be fully explained by a traditionalist approach. On the one hand, states have not adopted further global transfer criteria so far, and several states remain sceptical about the desirability of a global treaty. The key aim of public advocacy actors, that is, the development of a legally binding instrument on transfer criteria, has therefore not yet materialised. This suggests clear limits to the policy impact of non-governmental advocates and reflects traditionalist expectations in the area of controls on legal

transfers of conventional arms. Specifically, it reflects a failure of non-governmental advocates to change the preferences of a few states that oppose global transfer criteria and transparency as infringements of their national sovereignty and to be in conflict with their military interests.

But it cannot be argued that the impact of non-governmental advocacy was negligible. Non-governmental policy experts were key actors in efforts to develop and implement strategic approaches to norm promotion on transfer controls. They advised governmental initiatives such as the Lancaster House process on the feasibility of further steps towards global transfer criteria. This included advice on the issues that should be focused on and the strategic approach to their promotion among other governments. The technical advocacy by non-governmental actors in relation to small arms transfer criteria as well as the public advocacy of Control Arms further contributed to the emerging support for a global arms trade treaty. Indeed, the support by most states for the launch of the UN process on the ATT in 2006 is significant. It shows that non-governmental advocates successfully established the argument that further developments were a moral obligation in the area of transfer controls.

#### *4.2.b.4 Analysis*

Traditionalist expectations about limits to the policy impact of non-governmental advocacy actors are partially borne out in relation to developments on conventional arms and small arms since 2001. Public advocacy actors did not see their aims realised in relation to legally binding instruments on tracing small arms, on brokering controls, and on transfer controls. They were not successful in encouraging clear commitments to the development of global instruments on brokering and transfer controls. This reflects expectations that non-governmental advocacy actors will have a limited policy impact

in areas that constrain national flexibility in arms controls. It suggests that non-governmental advocates failed to influence the interests of states that value their flexibility in national controls over the humanitarian consequences attributed by advocates to insufficient controls. These states, illustrating state behaviour expected by traditionalists in the security sphere, could block advocated developments within the consensus-bound decision-making in the UN process on small arms.

Nevertheless, there is some evidence for a significant impact of non-governmental advocacy within the given constraints. Technical advocacy actors made a clear contribution to the development of the International Tracing Instrument and saw their strategic priority realised of the consolidation of norms on cooperation in tracing. The norms reduce the flexibility of states to organise covert arms transfers without the risk of the transfers later becoming publicly known. Further, the impact of technical and public non-governmental advocacy in relation to global transfer controls is notable. Whether states will actually strengthen global transfer controls is not yet decided. But the launch of the UN process on the ATT directly reflected non-governmental advocacy that encouraged states to express their support for further developments. Expressing such support allowed states to present themselves as responsive to the moral concern of destabilising and illicit arms transfers and as active proponents of international peace and security.

### **4.3 Conclusions**

Chapter four considered the role and policy impact of non-governmental advocacy on global arms control norms. It asked whether the role and impact of such advocacy suggests an increased significance of non-governmental actors in the field of conventional arms and small arms control. Specifically, it looked at the extent to which

non-governmental actors contributed to developments and succeeded in influencing governmental choices and seeing their policy aims realised. The analysis suggests the continued relevance of traditionalist perceptions about the importance of non-governmental advocacy in areas that affect national security interests and flexibility in arms controls. Public advocacy actors cannot be said to have played leadership roles in the development and negotiation of the UN Programme and the International Tracing Instrument. They also failed in their advocacy of legally binding instruments and, so far, the launch of negotiations on small arms brokering and transfers of conventional arms. Likewise, non-governmental actors did not succeed in their technical advocacy of specific normative elements such as the adoption of indicators of surplus arms or the inclusion of ammunition in the International Tracing Instrument.

The examples confirm traditionalist expectations inasmuch as non-governmental actors did not challenge the overall primacy of states in normative developments. Further, states did not find consensus on the highly mature norms that public advocacy actors promoted in areas affecting national security interests. The consensus-bound nature of negotiations allowed individual states to effectively block developments they considered as undue interferences in their national sovereignty. The relevant states thereby demonstrated the behaviour of states that traditionalists would expect in the security sphere. The examples also suggest that states with restrictive agendas remained resilient to the moral leverage exerted by non-governmental actors. The states did not change their interests in relation to the advocated norms despite the arguments by non-governmental actors that the norms are imperative to countering the destabilising effects and humanitarian consequences of illicit arms transfers. The limits to the role and impact of non-governmental advocacy consequently indicate the endurance of important aspects of the traditional governance systems in the security sphere.

At the same time, non-governmental research and advocacy efforts were essential to the conceptual development of control norms. Non-governmental actors provided much of the knowledge about control challenges and possible solutions that informed states about the negative effects of poor controls. They can be seen as having played a leadership role in respect to at least the identification of the basic principles and normative elements that states debated at the global level. Further, non-governmental policy experts acted as critical consultants to interested governments and were integral members of coalitions of medium and small states advocating strengthened controls. Within this context, they provided strategic advice on entry points and priorities for norm development in areas affecting national security interests. They also facilitated the emergence of these coalitions by identifying common practices and views among states and, drawing on regional and sub-regional norms, promoted consensus on minimum standards. In addition, public advocacy actors played a critical role in encouraging the UN process on an international Arms Trade Treaty and promoting humanitarian concerns in conventional arms control debates.

The close cooperation and interaction between nongovernmental actors and states and their influence on debates in areas seen as the exclusive domain of governments are not expected in a traditional system of security governance. There are also policy outcomes in relation to the UN process on small arms that are not expected from a traditionalist perspective. Indeed, the global norms that states adopted in the UN Programme and the International Tracing Instrument broadly reflect the strategic priorities that non-governmental policy experts advocated within policy coalitions. The adoption of norms on issues such as small arms stockpile controls and cooperation in tracing illicit small arms are especially notable because they constrain national flexibility in areas directly affecting national security interests. Importantly, it



demonstrates that states responded to the moral leverage of non-governmental actors in at least some sensitive areas. States accepted constraints on their national flexibility as members of a moral community concerned by destabilising and illicit arms transfers. Non-governmental actors were the key actors who established the argument that the acceptance of the advocated norms was a moral imperative.

In short, the analysis demonstrates that limits to the role and impact of non-governmental advocacy continue to exist in issues related to the national security and flexibility of states. Non-governmental actors failed to convince individual states to change their restrictive approaches and accept constraints in areas they consider as undue interferences in their national sovereignty. But there is evidence for at least some change in the traditional system of security governance. The close interaction between non-governmental actors and interested states suggests a greater willingness of many states to cooperate with such actors in the area of arms control. In particular, the roles of non-governmental actors in the emergence of global arms control norms reflect what neo-liberal institutionalism and constructivism often identify in relation to non-governmental advocacy in areas of 'low' politics such as environmental protection or human rights. In terms of constructivism, the analysis shows that non-governmental actors were successful in promoting global debates on conventional arms and small arms control. Importantly, they succeeded in shaping the debate by establishing the argument that the destabilising effects and humanitarian consequences of illicit transfers impose a moral imperative to strengthen national controls.

## **Chapter 5: Arms control norms and advocacy in the EU**

Chapter five focuses on normative developments and the significance of non-governmental actors in the area of conventional arms control in the European Union since the late 1990s. In particular, it asks whether the control norms that states adopted signal a significant change in their understanding of national security interests. Further, it asks whether the role and impact of non-governmental advocacy actors in the promotion of these norms confirm their increased importance in the area of conventional arms control. Chapter five thereby complements the preceding research focus on global norms and advocacy on conventional arms and small arms control. As shown in chapters three and four, EU states adopted control norms on transfer criteria, transparency, and brokering controls that, in comparison to multilateral norms at other levels, are of a high level of maturity. Further, EU member states actively pursued ambitious policy agendas at the global level and closely interacted with non-governmental advocates in the promotion of strengthened global control norms. This chapter allows for the analysis of the actors and dynamics that drove the developments in the EU and shaped the national security interests of EU states in relation to regional and global control norms.

The regional focus on the EU is also of relevance to this research because the intra-regional developments pose a particularly puzzling situation from a traditionalist perspective. The situation prior to the 1990s broadly reflected traditionalist expectations about state behaviour in the area of conventional arms control. The European Political Co-operation, created in 1969, provided a forum for meetings of the foreign ministries of European Community (EC) states to coordinate national policies and enhance the collective voice of Western European interests abroad. At times, such coordination extended to security policies and arms export controls. Examples are the EC arms

embargoes on Libya and Syria in 1985 and South Africa in 1986. Further, states accepted constraints on their national flexibility in arms transfer decisions inasmuch as they did not transfer equipment to potentially hostile states in the Warsaw pact. But the cooperation between states did not transcend ad hoc actions such as the embargoes or voluntary constraints on transfers to potentially hostile states (see for example Davis, 1999, p. 152-4).

In addition, European states accepted constraints on the quantity of conventional arms in their national stockpiles as a confidence building measure between states in Eastern and Western Europe under the 1990 Treaty on Conventional Armed Forces (see chapter two). Again though, the treaty did not constrain EU states in their national arms transfers in light of the potentially destabilising effects of such transfers in other parts of the world or their contribution to humanitarian violations. In other words, states retained a high degree of flexibility in their national transfer decisions and autonomy from multilateral interferences until the end of the Cold War. Traditionalist assumptions are also confirmed with respect to the general absence of official debates on conventional arms control between governments and non-governmental actors in Europe before the 1990s. States did not publish information on their transfers at the regional level, and there existed no formal structures for regular exchanges of views between states, the European Parliament, and non-governmental organisations. States retained therefore a high degree of exclusivity and autonomy from interferences of non-governmental actors in their transfer decisions.

Two decades later, the situation no longer corresponds easily to traditionalist expectations. States adopted various instruments in the EU that impose detailed and binding constraints on their national flexibility in relation to conventional arms control. Importantly, many of the adopted norms directly touch on militarily sensitive issues and

are based on concern about potentially destabilising and other undesirable effects of arms transfers in other parts of the world (see below). States now also regularly debate control standards within the EU. The EU Council publishes annual reports on the implementation of the EU instruments and presents developments to the European Parliament. The parliament and non-governmental organisations publish reports in response to those by the EU Council and frequently exchange views about regional control policies. Indeed, non-governmental control advocates played active and visible roles throughout the development of the current EU governance system on arms control. They often entered into close policy coalitions with supportive states and actively participated in regional policy debates (see below). But, as with regards to global norms and advocacy on small arms control, it has to be asked whether this change is significant in the governance of conventional arms controls in the EU.

The following section of this chapter looks at inter-governmental processes that drove the normative developments in the EU and considers the degree to which the adopted norms signal changed understandings of states of national security. The second section investigates the role and policy impact of non-governmental actors in the developments and considers the conditions that influenced the impact of such actors.

### **5.1 Multilateral norms on arms control in the EU**

The changes in multilateral control norms in the EU can be traced back to the end of the Cold War and the first Gulf War. Having contributed to arming Iraq during the 1980s, several European countries were confronted with having inadvertently contributed to regional instability in the Gulf. The events acted as a catalyst for developments at national levels. Italy, for example, engaged in an overhaul of its national arms export law and adopted new legislation to enhance controls on the export, import, and transit

of military equipment in 1990 (Italy, 1990). Similarly, Belgium adopted new arms control legislation in 1991 (Belgium, 1991), as did Sweden in 1992 (Sweden, 1992). The Gulf War also demonstrated the shortcomings of a multilateral control system relying on exclusively national policies. As argued by observers, “the denial of exports to Iraq by some Community members, for reasons of international security, had little practical effect given the export practices of other Community members” (Saferworld, 1991, p. 12). Responding to this shortcoming, European Community states convened an *ad hoc* working group (COARM) in 1991. COARM had the mandate to investigate possible ways to strengthen cooperation among member states in their arms export policies.

One of COARM’s first actions was a review of national regulations on arms export to identify common denominators in arms export standards. EC states subsequently adopted the *Declaration on Non-Proliferation and Arms Exports* in June 1991. The declaration expressed the view “that far-reaching international action is needed immediately to promote restraint and transparency of conventional weapons”. It also made an explicit reference to the Gulf War in 1990-91 and the necessity to enhance non-proliferation regimes and prevent destabilising accumulations of conventional arms. The declaration contained seven criteria that states were encouraged to consider in their arms export decisions. The criteria included respect for the international commitments of the EC member states; respect of human rights in the recipient country and its internal situation in view of tensions or civil wars; the preservation of regional stability; and the risk for diversion in the buyer country or undesirable re-exports (Council of the EU, 1991). The declaration was expanded in June 1992 to include an eighth criterion on the export’s compatibility with the recipient’s country economic capacity (Council of the EU, 1992).

The declaration is notable for establishing common control norms that constrain national flexibility in arms export decisions. The constraints were accepted not to ensure the national security of EC states but to promote peace and stability abroad. But the declaration by EC states is not necessarily incompatible with traditionalist expectations because of its weak binding character and the little detail in its norms on transfer criteria (see chapter three). States retained therefore a high degree of national flexibility in their export practices despite the adoption of the declaration. Less easily explained by traditionalists is the continued strengthening of common control norms in the EU the following decades. The normative developments are clearly illustrated by the various control instruments that states adopted in the EU since the mid 1990s. The following sub-sections review the relevant instruments and processes in relation to small arms and conventional arms controls.

### **5.1.a Norms on small arms control**

One of the first control instruments that EU states adopted since the mid 1990s was the *EU Programme for Preventing and Combating Illicit Trafficking* of June 1997 (Council of the EU, 1997). States negotiated the programme against the background of the growing international concern about the challenge of the proliferation and trafficking of illicit small arms (see chapter two). Drawing on the momentum, the Dutch government had tabled a proposal for a joint program to address the issue of small arms proliferation during its EU presidency in early 1997. The focus on proliferation was ambitious because it promoted limitations on national flexibility regarding legal arms exports. Several states opposed the proposal. As one observer argued, they were “reluctant to agree to a programme which explicitly focused on restraining legal as well as illicit arms accumulations and transfers” (Greene, 2000, p. 171).

In compromise, the Dutch government restricted the focus of the proposed instrument and subsequently successfully chaired the negotiations of the politically binding instrument. The programme recognises accumulations and illicit trafficking of conventional arms and, in particular, of small arms, as a threat to international security as well as to the internal stability and human rights situation in affected countries. It promotes enhanced cooperation and coordination among law enforcement agencies at national and cross-border levels in the EU. It also promotes concerted action to assist and build capacities in other states to combat illicit arms trafficking. The programme stipulates that the EU Council will annually review the implementation of the programme.

The EU approach to small arms control was further defined in the EU *Joint Action on Small Arms* that states adopted in December 1998. The legally binding joint action is concerned with the adverse affects of small arms accumulations and spreads on security, post-conflict rehabilitation, and sustainable development. It commits EU states to promoting responsible arms export policies and national weapons management practices at multilateral levels. It also promotes technical and financial support to countries requesting assistance. The Joint Action was repealed and replaced to extend its scope of application to ammunition for small arms and light weapons (Council of the EU, 2002). The EU Council publishes annual reports on both the implementation of the EU Programme on Trafficking and the Joint Action on small arms since 2001 (Council of the EU, 2001b).

The analysis of the EU instruments on small arms control provides several elements that conform to traditionalist expectations by limiting the constraints imposed on states in their national practices. The 1997 EU Programme on trafficking excludes the legal

small arms trade from its scope and is only politically binding. The EU Joint Action on small arms, while legally binding and including ammunition in its scope since 2002, only commits states to promote certain small arms norms at multilateral levels. It does not, however, commit states to strengthen their own small arms control standards. At the same time, the adoption of the instruments indicates important changes in common understanding of regional arms control. The EU Programme legitimised and, by providing for continued reviews, institutionalised the issue of illicit arms trafficking on the EU agenda. Specifically, it contributed to consolidating the argument that negative effects of arms trafficking abroad required action at regional and national levels in the EU. The subsequent joint actions on small arms extended the common understanding among EU states to aspects of the legal small arms trade and therewith aspects that were still excluded from the EU Programme. This demonstrates the incremental nature of changes.

In addition, the developments in relation to small arms control norms point to the importance of individual governments in normative changes. The Dutch initiative on small arms trafficking responded to the moral concerns raised by undesirable effects of small arms trafficking and transfers. It allowed the Dutch government to present itself as an honest broker of international peace and security. The advocacy by individual states and peer pressure facilitated the subsequent consensus on a more comprehensive approach to small arms control. The change in the position of states that initially opposed controls on legal transfers is significant. It signalled the acceptance by these states of the argument that ‘good’ membership in the EU and the reputation of EU states as responsible arms exporters justified constraints on national flexibility in arms controls. In short, the small arms norms that states adopted in the EU are limited in their specificity and binding character. This reflects traditionalist expectations. But the small



arms instruments adopted in 1997/98 also indicate at least some changes in common governmental understandings of acceptable issues for multilateral cooperation. Further, the instruments opened the way for advocacy of EU states of comparatively highly mature norms in the context of the UN process on small arms (see chapter four).

### **5.1.b Arms transfer criteria**

The adoption of common export criteria in the EC in 1991/92 provided a basis for greater cooperation between states in their conventional arms transfers but there remained challenges. First, states interpreted the criteria differently. While Portugal and Italy were observing a self-imposed arms embargo on Indonesia in the early 1990s, Germany, the United Kingdom, and the Netherlands continued their exports. Likewise, some states denied licenses for exports to sub-Saharan Africa on the grounds of undesirable effects of arms exports in the region but not others (Saferworld *et al.*, 1995, p. 1). Second, states had divergent views about desirable next steps. Some states called for the development of common interpretations of export criteria. Other states, especially France and the UK, opposed measures that would interfere with their national practices. As argued in a report by a non-governmental research centre in 1992:

“On the EC level, concepts vary largely and make it difficult to agree on a single policy. At one extreme, France expounds a defence philosophy based on national autonomy and independent nuclear capability. This implies self-sufficiency in weapons production and foreign sales to sustain an industry of the required size. The UK has always seen positive political utility in arms transfers as a means of enhancing the security of non-EC allies of overseas possessions. Belgium, Denmark, Germany, Italy and the Netherlands have distanced themselves from using arms exports as an instrument of foreign policy, and / or

taken public positions in favor of restraint. At the far end of the scale come Ireland and Luxembourg, with no evident interest in production or export” (Saferworld, 1992, p. 5).

Some progress was made with the decision of states to broaden the mandate of COARM to explore possible steps towards a harmonisation of national arms export policies in 1994 (Davis, 1999, p. 156). But even this progress was limited with French insistence that a reference was included that “no mention in the mandate should be construed as curtailing national decision-making capability” (Adam, 1995, p. 87). Indeed, it was only in 1997 that further developments took place. The British general elections brought to power the Labour Party in May 1997. While in opposition, key members of the Labour party had become vocal supporters of greater arms control on both national and multilateral levels. Once in power, the new government announced an “ethical foreign policy” as the basis of British foreign affairs. It included the adoption of new political guidelines for British arms exports and a commitment to work towards an EU code of conduct on arms exports. This represented a significant shift from the position of the previous conservative government and its opposition to a strengthening of multilateral cooperation on arms policies (see chapter six).

The French general elections brought to power the Socialist party in June 1997 and, as had been the case in the UK, replaced the previously ruling conservative government. Although several members of the new French government continued the established opposition to the further development of multilateral arms export standards, others, including the Prime Minister Lionel Jospin, indicated greater openness (Davis, 2002, p. 101). Mr Jospin was reported to have “stated that he would study the idea of a European Code of Conduct ‘with interest’” and engage with the British government on the issue in the autumn of 1997 (Saferworld, 1997b, p. 2). This implied that the

previous tacit consensus between the UK and France to keep arms export policies largely off the EU policy agendas had ceased to block developments at the EU level.

The developments in the area of multilateral transfer criteria until 1997 illustrate the structural constraint of consensus-based negotiations within COARM. France and the UK effectively hindered multilateral developments they considered as undue interferences in their national sovereignty. They thereby behaved in ways expected by traditionalists in the area of conventional arms control. As great powers, they resisted pressures of medium and small states that advocated greater restraint in arms transfers to better promote security and stability abroad. This veto power of individual states in consensus-based negotiations mirrors the structural constraint in this respect in the UN processes on small arms and conventional arms control. At the same time, the analysis demonstrates how domestic-level changes, that is, the changes of government in France and the UK, significantly altered the multilateral balance of interests in relation to developing strengthened common transfer criteria.

The following research first turns to the negotiations of the 1998 EU Code that were made possible by the domestic-level changes. It then turns to the developments in multilateral transfer criteria in the decade following the adoption of the EU Code.

#### *5.1.b.1 The EU Code negotiations*

The UK presidency of the EU in early 1998 offered a valuable opportunity for the British government to take on a leadership role on multilateral arms control. The British presidency approached France at an early stage to ensure the consent of the state that could be expected to be most important source of opposition. Moreover, the chances for the success of a UK policy initiative seemed favourable. The British government had the support of the coalition of like-minded governments that already had called for a

strengthening of existing common arms control policies for several years. A basis for the UK initiative was the text of national guidelines to govern British arms exports that the UK government had adopted in 1997 (see chapter six). The guidelines became the basis for a British-Franco initiative to work towards a strengthening of common arms export controls at the EU level. It led to the tabling of a joint Anglo-French draft of a *Code of Conduct* that was negotiated during COARM meetings in early 1998 (Davis, 1999, p. 170).

The views of states differed during the negotiations on a range of issues. They included whether the instrument should be politically or legally binding and whether it should cover brokering controls. Another focus of discussion concerned the extent of information exchanges under the code. An important element for a harmonisation in national export policies was that states should inform other states about denials of export licenses. Other states would still have the right to later authorise an essentially identical transaction, thereby undercutting the decision by the state that originally denied the export license. But states considering undercutting license denials by other states would, prior to taking a decision, have to consult with the state that originally denied the license. The debate centred on whether only the two states concerned by the license should be involved in the consultations or all EU states.

A further element in relation to information exchanges was annual reports on the national implementation of the EU Code. Several states favoured the establishment of greater public transparency and the publication of an annual report by the EU Council that would consolidate the information provided in the national reports. This was opposed by France. States also debated the scope of individual export criteria. Sweden, Belgium, Ireland, and the Netherlands argued for general restraint in exports to serious human rights violators. France argued for a formulation that left greater room for

national interpretation. In the end, consensus could only be reached through several compromises. As explained by a Dutch official: “[a]s consensus was required from all 15 member states, France was in a very strong position. It was felt that it was important to get a code agreed even if it meant watering it down” (quoted in O’Callaghan, 1998).

States adopted the EU *Code of Conduct on Arms Exports* as a politically binding instrument in June 1998. The EU Code aimed to set high common standards for conventional arms by member states and prevent the export of weapons “which might be used for internal repression or international aggression or contribute to regional instability” (Council of the EU, 1998, preamble). The Code introduced important changes to the regional governance of arms export policies. It specified for each criterion whether states ‘will not’ or ‘should not’ allow exports if the criterion is not met or whether states are to (only) take the criterion into account in their assessments of export licenses. The code also elaborated on the criteria and introduced references to international humanitarian law and sustainable development as well as factors to be considered in relation to the internal situation of the recipient state and regional stability.

The criteria were complemented with operative provisions that included bilateral consultations and annual inter-governmental reporting on the code’s implementation. Further, the code committed states to develop and adopt a common list of military equipment that was to be covered by the instrument. The provisions thereby provided a mechanism for continued work towards the harmonisation of export policies. The annual reviews of the code’s implementation also reflected the position of governments that wanted to see the EU Code as a step towards further developments.

The adoption of the EU Code and the norms contained therein partially reflect traditionalist expectations about limits to changes in the willingness of states to cooperate on arms transfer controls. The EU Code was only politically binding, restricted consultations to the bilateral level, excluded brokering controls, and did not contain a commitment to publishing the consolidated EU report on the implementation of the code. The examples illustrate the opposition of individual states to normative elements they considered as too intrusive and constraining on their national flexibility and secrecy in conventional arms transfers.

Importantly though, the EU Code demonstrates that states accepted the moral argument of having a special responsibility as significant exporters to prevent undesirable effects of the exported arms abroad. In addition, there were limits to the maturity of the norms that states adopted. But the norms were nevertheless more specific and detailed than before. The acceptance by states of constraints on national flexibility in arms transfers is not expected from a traditionalist point of view. It does not portray the behaviour of states seeking to retain a maximum of flexibility as the paramount goal in national security interests.

The process towards the EU Code also illustrates again the possible importance of individual states and coalitions of the willing as normative drivers in inter-governmental debates. Further, the adoption of common standards on arms transfers in the EU Code helps explain why states extended the scope of common understandings on small arms to include controls on legal small arms transfers in the EU Joint Action half a year later. It also helps explain the continued support of EU states for the development of global norms on small arms and conventional arms controls (see chapter four).

#### *5.1.b.2 Developments since 1998*

Policy discussions between states on the harmonisation of their national export policies continued after the adoption of the EU Code. A practical contribution was made with the adoption of the *EU Common List of Military Equipment* in 2000 (Council of the EU, 2000). The list, which has since been regularly updated, identifies the arms categories to which the EU Code applies. In parallel, states worked towards common understandings on a range of issues to facilitate the implementation of the code. The progress in discussions was listed in the consolidated annual reports that the EU Council published since 1999 although no such publication was foreseen under the EU Code. The council published the first *User's Guide to the EU Code of Conduct on Arms Exports* in 2004 to collate emerging understandings and agreements between states (Council of the EU, 2004). The guide is addressed to national arms export licensing officials and offers guidance to their implementation of the EU Code in national decision-making processes. The guide was frequently updated and, since 2005, also provides increasingly detailed discussions of factors and indicators that can or should be used in the assessment of export license applications under the EU Code criteria (Council of the EU, 2007).

The developments towards greater specificity in the understandings of how to implement the EU Code were complemented with continued advocacy by some states to transform the EU Code in a legally binding instrument. An increasing number of states that considered their national systems to be in full conformity with the EU Code or even more restrictive supported the position by the mid 2000s. The adoption of the legally binding EU instrument on brokering controls in 2003 reinforced the argument that a legally binding code was desirable and feasible (see below). It was especially France that acted as a stumbling block towards such a transformation. The French

opposition was less based on a principled rejection than on the political aim to link the adoption of the instrument to dropping the EU arms embargo against China (COARM representative, interview, 2006). It was only after France dropped its opposition that the Council adopted the *Council Common Position defining common rules governing the control of exports of military technology and equipment* in December 2008 (Council of the EU, 2008).

The common position transformed operational commitments into legally binding obligations on states. That is, the common position obliges states to assess export license applications for items on the EU Common Military List on a case-by-case basis against the instrument's criteria. It also legally requires that states exchange information through denial notifications and consultations and publish annual national reports on their arms exports. The EU Council is mandated to annually publish a consolidated report on the basis of reports submitted by states. In parallel, the common position introduced several elaborations and understandings that states had previously agreed on in their discussions on the implementation of the EU Code. The common position thereby built on the EU Code and further increased the maturity of arms transfer norms in the EU.

Specifically, the common position defines license export applications to cover applications for licenses for physical exports, including exports for licensed production of military equipment abroad, for brokering activities, for transit licenses, and for intangible transfers of software and technology. The instrument also elaborated on individual criteria. It stipulates that states shall deny licenses if there is a clear risk that the exported equipment might be used in serious violations of international humanitarian law. It also stipulates that states shall consider "the record of the recipient country in respecting any re-export provision or consent prior to re-export which the



exporting Member State considers appropriate to impose” (*ibidem*, art. 2, criterion 7.d.). Further, the common position details that decisions on export licenses shall be based on the reliable prior knowledge of the end-use of the equipment in the country of final destination and require appropriate documentation such as a verified end-user certificate. In addition, states are required to take account of the potential use of items that are produced abroad with technology or production equipment that is to be exported from an EU state (*ibid.*, art. 5).

Traditionalist would consider unlikely the developments and policy outcomes in the area of multilateral transfer criteria in the EU since the late 1990s. Decisions on arms exports remain a national prerogative, and multilateral standards continue to fall below positions advocated by some states and non-governmental actors (see below). Further, the EU Common Position on military export controls explicitly confirms the continued primacy of states by stipulating that the “decision to transfer or deny the transfer of any military technology or equipment shall remain at the national discretion of each Member State” (*ibid.*, art. 4.2). The Common Position also acknowledges the “wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort” and the relevance of the effect of proposed exports “on their economic, social, commercial and industrial interests” (*ibid.*, preamble, 13; and art. 10).

But the flexibility of governments to authorise exports for political or economic reasons is seriously constrained by the high levels of specificity and binding character of multilateral norms in the EU. This demonstrates the increased acceptance of EU states to have a moral responsibility to prevent undesirable effects of exported arms abroad. Specifically, the outcomes show that the desire of states to be perceived as responsible actors concerned about security and human rights abroad increasingly

overcame the traditional desire to retain national flexibility in export decisions. Indeed, the adoption of the controls that were agreed on by 2008 was, in the words of a former COARM member, ‘unthinkable’ for governments during the negotiations of the EU Code in 1998 (Former COARM representative, interview, 2008). Interviews with COARM representatives also confirmed that peer pressure as well as learning and socialisation processes among governments were integral factors of cooperation within COARM and facilitated the developments (see below; COARM representatives, personal interviews 2003-07).

### **5.1.c Transparency on arms transfers**

Multilateral and national norms on arms transfer transparency cascaded in the EU with the adoption of the EU Code in 1998. The emergence of the norms dates back to early 1990s with the establishment of the UN Conventional Arms Register in 1992 and its voluntary reporting mechanisms on exports of conventional arms. EU states also committed to inter-governmental reporting on conventional arms exports in the Wassenaar Arrangement in 1996 (see chapter three). Most states had therefore already accepted a norm on at least inter-governmental reporting when the EU Code was negotiated. But there remained differences of views. Some states, including Belgium, Finland, the Netherlands, Sweden, and the UK argued for the publication of the national submissions under the EU Code and of the consolidated EU report that was to be drawn up on the basis of the submissions by states (Former COARM representative, interview, 2008). Notably, these states already provided or were committed to providing annual reports to parliaments and the public at their respective national levels (see chapter six). As mentioned, France opposed the publication of reports and successfully blocked a reference thereto in the EU Code.

Another issue of discussion was the level of detail on arms exports that states should provide in their national reports. Few states supported the proposal that information should allow for identifying the country of destination and the quantity, type, and value of exported equipment. The principal argument against this level of transparency was that it would hurt European defence equipment exporters by revealing the values of individual contracts and therewith commercially sensitive information to competitors. Indeed, most states sought to retain flexibility in their national reporting practices during the EU Code negotiations. In result, the EU Code avoided the question altogether by stipulating only that states should report on their implementation of the code and not further specifying what information or detail should be contained in the reports. Nevertheless, continued advocacy by individual states and an interplay between domestic and regional developments led to a further elaboration of EU norms on transparency.

In September 1999, the Finish EU presidency published the first consolidated EU report with the tacit consent of France. One reason for the change in the French position was the low level of detail in the report in comparison to the detail the French government was prepared to publish at the national level four months later. That is, the first consolidated EU report restricted statistical information on exports to only the total value and number of export licenses (Council of the EU, 1999, p. 7). In contrast, the French report also provided information on the value of licenses to each destination country (French Ministry of Defence, 2000a). The decision by France to publish its national report was encouraged by the growing number of states that already published or had committed to publishing reports since the EU Code's adoption (Representative of the French Ministry of Foreign Affairs, interview, 2005). This further increased

pressure on other states to follow emerging best practices and also publish their national reports.

States that provided comparatively high levels of detail argued for the harmonisation of reporting standards at high common levels within the EU. An example was the UK that published national reports providing information on the total value and number of licenses to individual recipient countries as well as the relevant military equipment category since 1999 (Government of the UK, 1999a). The publication of detailed information without detrimental effects to defence exporters encouraged other states to follow suit. France first provided information on the exported military equipment categories in its national report that was published in December 2001). Specifically, there developed what observers have called a ‘beauty contest’ among some states to provide the most transparent information in the EU (COARM representatives, personal interviews 2003-07). This is reflected by the continued incremental changes towards greater transparency in national reports in the early and mid 2000s (chapter six).

The developments at national levels enabled further progress at the regional level. The consolidated EU reports provide information on the value and number of licenses granted for exports to each region since 2001 and to each recipient state since 2002. The consolidated reports also detail the military equipment categories concerned by the licenses since 2004. The adoption of the 2008 Common Position on military export controls provided regional norms on transparency with yet greater maturity. That is, the common position transformed the commitment by states to annually provide an export report to the EU Council into a legally binding obligation. The common position also formally introduced an obligation by the EU Council to annual publish a consolidated report on arms exports by EU states.

As shown then, transparency norms on the EU developed towards high levels of comprehensiveness, detail, and binding character in the framework of the EU Code of Conduct. While there are limits to transparency (see below), the maturity of the norms is now significantly greater than what traditionalists might have expected. The acceptance by states of this high level of transparency does not reflect the behaviour of states seeking to retain a maximum of secrecy on transfers as a primary national security interest. In addition, the growth in transparency increasingly exposed states to parliamentary and public scrutiny and thereby reduced their autonomy and exclusivity from non-governmental interferences in export decisions (see chapter six). The ‘beauty contest’ among governments on the most transparent national reports is also a clear example of change in national interests of states. It again illustrates socialisation processes among states and the acceptance of the argument that the ‘good’ membership in the EU required greater openness and transparency (see below).

#### **5.1.d Arms brokering controls**

Only few states operated national controls on arms brokering by the mid 1990s or supported proposals to include arms brokering controls in the 1998 EU Code of Conduct (see below). They included Germany, Sweden, and the Netherlands (Representative of the German Federal Ministry for Foreign Affairs, interview, 2004 and Eavis, interview, 2002). Other governments remained unconvinced of the need for such standards and blocked a reference to brokering controls in the negotiations of the EU Code. Nevertheless, individual governments continued to promote common standards on brokering controls. The government of Germany raised the issue of brokering controls within COARM and proposed to develop EU standards on the issue

in early 1999 (Representative of the German Federal Ministry for Foreign Affairs, interview, 2004).

Efforts within the EU were complemented by advocacy efforts and developments abroad. The government of Norway hosted an international meeting with a focus on arms brokering in December 1999. The meeting provided an informal setting for interested governments to develop ideas and proposals for the control of arms brokering (Norwegian Ministry of Foreign Affairs, 1999). It was attended by representatives of various EU governments that did not operate brokering controls at the national level, including Austria, Belgium, Finland and the UK. EU governments also agreed to consider the establishment of controls on small arms brokering in the OSCE Document that was adopted in November 2000 (see chapter three).

The emerging consensus on brokering controls among EU governments was reflected in the negotiation and adoption of the politically binding EU *Guidelines on Brokering Controls* under the Swedish EU presidency in 2001 (Council of the EU, 2001a, p. 6-7). The guidelines explicitly recognised the need to prevent brokers to circumvent arms embargoes and export criteria. They encouraged states to establish a licensing requirement for brokering activities by persons and entities operating on their territory and to assess license requests against the EU Code criteria for arms exports. They also suggested that states “should seriously consider” a registration requirement for arms brokers (*ibidem*).

While a first step, certain governments continued to argue for a stronger commitment to regional arms brokering controls. They were joined by an increasing number of states that amended their national controls to cover arms brokering activities. Austria amended its national legislation to cover aspects of arms brokering in 2001. France, Finland, and Belgium followed suit in 2002 and 2003. Further states initiated

domestic legislative processes to integrate brokering controls into their national export controls. They included Spain and the UK (Anders, 2004, p. 21-24). This meant that, by early 2002, more than half of the EU member states either already had, or planned to have, national controls on brokering. States that operated or prepared for brokering controls had a clear incentive to support the adoption of a legally binding EU instrument on brokering controls. Their national controls would have limited effects if the brokers merely needed to conduct undesirable activities from EU countries without relevant controls.

The growing support for strengthened EU standards led to a decision within COARM to negotiate a legally binding Common Position on brokering controls in 2002. But there remained disagreements between states in respect to the introduction of mandatory requirements for the registration of brokers and the control of their activities abroad. States that already had the relevant standards in their national legislation favoured their introduction in other EU states. They included Belgium and France in relation to the registration requirement and Belgium, Finland, and Sweden in relation to extraterritorial controls on arms brokers. Other states opposed the standards and argued that they would lead to unjustifiable administrative burdens for national licensing bodies and the defence industry, fail to effectively add to domestic oversight of authorities, and/or contradicted national practices (*ibidem*, p. 21-24, and Anders, 2003, p. 7-8).

Further negotiations led to the adoption in the EU Council of the *Common Position on the control of arms brokering* in June 2003. The common position imposed a legal obligation on states to establish a national licensing requirement for brokers and to assess applications against the EU Code export criteria. It retained a registration requirement as an optional control element and encouraged states to consider

controlling extraterritorial brokering activities (Council of the EU, 2003). This recommendation for extraterritorial controls is not contained in the 2001 EU guidelines on brokering controls.

The analysis above demonstrates that the emergence of multilateral brokering norms in the EU was facilitated by the prior adoption of a common approach to arms export controls. As in the areas of transfer criteria and transparency, the outcomes of the evolutionary process towards highly mature norms are not expected from a traditionalist perspective. The 2001 guidelines were only politically binding and excluded subsidiary norms on extraterritorial control. Subsidiary norms on the registration of brokers and the control of their extraterritorial activities remain voluntary under the 2003 Common Position.

But states increasingly accepted a moral responsibility to prevent the use of their territories for the brokering of illicit transfers abroad. This shows that their desire to be seen as responsible actors increasingly overcame the desire to avoid the administrative costs associated with brokering controls as well as the constraints on their national flexibility in arms controls. The evolutionary process in the development of brokering norms also illustrates again the close interplay between national and regional norms in the EU (see below). Further, the outcomes in the EU help explain the positions of EU states in support of global brokering controls.

#### **5.1.e Analysis**

The normative developments on small arms and conventional arms controls in the EU since the early 1990s indicate the continuing existence of limits to the willingness of states to cooperate in the security sphere. The norms that states adopted by the late



2000s are less mature than advocated by especially non-governmental actors (see below). This reflects that individual states still oppose developments they consider as too intrusive, ineffective, or unimportant. It also illustrates state behaviour that is expected by traditionalists. But multilateral norms incrementally changed and matured beyond levels that traditionalists consider likely in the area of conventional arms control. The adopted norms clearly constrain national flexibility and limit governmental exclusivity and autonomy from non-governmental actors. The changes demonstrate important changes in common understandings of moral responsibilities as arms exporters. The desire of states to be recognised as responsible actors contributes to explaining the acceptance of increasingly constraining norms. Specifically, the changes shows that the interests of EU states in relation to conventional arms control increasingly included concern for the impact of exported arms on security and human rights abroad.

The factors that drove the processes towards greater norm maturity and the conditions within which these processes took place deserve further analysis. There are parallels to the UN processes. One parallel is the structural constraint of consensus-based negotiations that allowed individual states to hinder normative developments they considered as too intrusive. In contrast to negotiations on global norms though, EU states could reach consensus on significantly more mature norms. This can be explained by the greater scope for peer pressure, moral leverage, and socialisation processes in the moral community constituted by EU states. To elaborate, both France and China may be seen as states that strictly opposed intrusive multilateral norms on conventional arms controls in the early 1990s. But the changes in interests and the acceptance of a special responsibility as an important arms exporter were much more profound in France than in China in the last two decades. It shows that France, as a Western democracy and EU

member state, was more open to pressures to demonstrate its commitment to security and human rights abroad than China. France was therefore also more willing to accept constraints on national flexibility and secrecy in conventional arms transfers than China.

Other parallels are the importance of interested states and coalitions of the willing in providing leadership roles on specific control issues and the evolutionary character of multilateral norms. Examples are the leadership roles by the Dutch government on the 1997 EU Programme on trafficking and by the British government on the 1998 EU Code. The annual reviews of the implementation of the instruments proved critical to establishing arms control issues on the EU Council agenda and facilitating further debates. Coalitions of states with national standards going further than EU standards used the reviews to continue their advocacy of a greater harmonisation of control practices across the EU. This often allowed for incremental changes despite initial resistance by individual states. An example is the publication of the EU consolidated reports despite initial French opposition and their growing transparency. Indeed, the normative developments in the EU provide various examples of voluntary or political commitments providing entry-points for continued debates and the maturing of the norms. The institutional framework and regular interaction between states within COARM further facilitated peer pressures and socialisation processes that underpinned changes in multilateral norms.

Of further note is the interplay between regional and national developments in the EU. As shown above, the maturing of multilateral norms influenced and was influenced by developments at national levels in the EU. Domestic changes in France and the UK in 1997 were critical events that opened the way for the negotiation of the EU Code of Conduct. The transparency on arms exports that was provided by some states in the late

1990s encouraged the emergence of greater transparency at the multilateral level. In turn, greater multilateral transparency encouraged further developments at national levels that sparked yet further changes at the multilateral level. Further, the negotiation of the legally binding 2003 Common Position on brokering controls was only made possible by the support of the growing number of states that were already adopting brokering controls at national levels. That more states already adopted brokering controls at national levels had, in turn, been facilitated by the adoption of the 2001 EU guidelines on brokering. The agreements within the EU also explain the comparatively progressive positions of EU states in UN processes.

The principal drivers underpinning these inter-governmental processes in the EU included, as indicated, socialisation and learning processes as well as peer pressure among states. As uniformly confirmed by eight interviewed COARM officials, states regularly compared the controls and developments in other EU states with their own national practices. This aimed to identify strengths and weaknesses of national controls in comparison to controls in other EU states and to learn from the experiences of other states (COARM representatives, personal interviews 2003-07). Governments were especially attentive to criticisms that their national practices fell below good practices operated in most other EU states. Subsequent changes in national interests indicate the socialisation of the states to the argument that they had a moral responsibility to accept certain constraints. A learning process is also suggested in relation to transparency norms. The experiences of states that published increasingly detailed reports on their arms exports reduced concerns in other states that this would be detrimental to the domestic defence industry. The adoption of control standards by a majority of EU states also increased the pressure on other states to conform to the emerging good practices (*ibidem*).

In short, the normative developments in the EU in the last two decades indicate the continued relevance of certain traditionalist assumptions about state behaviour in the security sphere. There remain limits to the maturity of multilateral norms and the willingness of states to cooperate in this area. Nevertheless, states adopted comparatively mature norms that greatly constrain governmental flexibility and autonomy in conventional arms controls. The normative changes were therefore more profound than what traditionalists would consider likely. The changes reflect the increased acceptance of EU states of a moral responsibility to ensure that they do not inadvertently contribute to insecurity and violations of humanitarian law and human rights abroad. There consequently exists some evidence for the significance of the changes in national interests in EU states in relation to conventional arms control.

## **5.2 Significance of non-governmental advocacy in the EU**

There existed few non-governmental actors with an active interest in regional controls on conventional arms in Europe in the late 1980s. There also existed no institutionalised exchanges of views between non-governmental actors and governments on regional arms control standards. Two decades later, the situation was fundamentally different. Numerous non-governmental research and advocacy organisations in EU states had programmes that looked at conventional arms controls and scrutinised their governments' implementation of export controls. Non-governmental actors formed national action networks in various states to lobby their governments on regional arms control standards. States in which such networks emerged include Austria, Belgium, the Czech Republic, France, Germany, Italy, Poland, Spain, Sweden, and the UK. The networks cooperated on transnational levels in the pursuit of joint policy aims such as the development of the EU Code of Conduct or EU standards on brokering controls (see below). In parallel, the national networks lobbied their respective governments on

changes in the domestic regulations on arms control. The role and impact of national advocacy networks at domestic levels are further explored in chapter six.

Likewise, the European Parliament (EP) became an interested and active actor on regional arms controls. Individual EP members participated in the transnational campaign for the adoption of the EU Code and a restrictive and ‘ethical’ approach to arms export policies by EU states (see below). In addition, the EP passed resolutions calling on EU states to strengthen common arms export controls in 1995-98 (European Parliament, 1995 and 1998). It annually discussed the EU Council’s report on the implementation of the EU Code and responded to them in ‘own initiative’ reports by the Foreign Affairs Committee since 2000 (chapter six). In parallel, the EP and other non-governmental advocacy actors lobbied EU states to promote comprehensive global controls on the trade in conventional arms and progressive positions in negotiations in the UN process on small arms (chapter four).<sup>15</sup>

A further change occurred with the acceptance of non-governmental actors as credible participants in policy debates. Members of the EP and non-governmental policy experts were invited to and presented at COARM meetings. COARM representatives regularly presented the annual EU Council report in the Foreign Affairs Committee in the European Parliament and responded to parliamentary questions and the reports by the committee. They also participated in informal workshops and seminars on EU arms controls that NGOs organised (see below). This acceptance allowed non-governmental advocacy actors an unprecedented level of access to governmental policy-making processes on EU arms controls. In turn, government officials used such contacts to consult with non-governmental policy experts on actions

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<sup>15</sup> The role and impact of European non-governmental actors in promoting global arms controls among EU states is excluded from this section because of the discussion of the significance of global advocacy on arms control in the preceding chapter.

and strategies for multilateral arms controls (Eavis, interview, 2002, and Smith, interview, 2003).

But do the changes confirm a greater willingness of states to cooperate with non-governmental advocacy actors in the field of conventional arms control? Do they confirm the increased significance of these advocacy actors in the field of conventional arms control in the EU? This section answers the questions by first looking at the degrees to which non-governmental actors participated and provided leadership in normative processes at the EU level. It then looks at the degree to which advocacy actors saw their policy aims realised at the multilateral level as well as the conditions that influenced the role and policy impact of non-governmental actors.

### **5.2.a Role of non-governmental advocacy**

Following the approach used in chapter four, this sub-section does not seek to comprehensively assess the various roles of non-governmental advocacy actors in the relevant normative processes in the EU. Rather, it focuses on some of the most prominent roles of these actors, that is, their roles in issue identification, awareness-raising, and agenda setting as well as in technical and public advocacy. The analysis is complemented with an assessment of the level of non-governmental participation in and access to inter-governmental processes on small arms and conventional arms control.

#### *5.2.a.1 Issue identification and awareness-raising*

Non-governmental knowledge generation and awareness-raising activities on conventional arms control date back to the early 1990s. Saferworld, a London-based non-governmental research and advocacy organisation published reports on conventional arms control in the European Community in 1991-92 (Saferworld, 1991

and 1992). Saferworld started to focus on the issue against the background of a British arms export scandal to Iraq (chapter six). Its reports mirrored the growing inter-governmental concern about poor regional control standards and paralleled the elaboration of the EC Luxemburg and Lisbon criteria during the same period. They also served as baseline studies for discussions among a small number of British non-governmental researchers and advocates. The discussions led to the idea of a regional code of conduct on arms exports to increase transparency and accountability of European states on their arms exports (Davis, 1999, p. 98)

By the late 1990s, non-governmental organisations had analysed and published reports on national arms control standards in several European states. The reports provided assessments of the general framework for regional export controls and on the scope of action in relation to specific control issues (see below and chapter six). In particular, they identified individual control areas and detailed the subsidiary norms and measures that governments were encouraged to adopt. The reports contributed to the conceptual development of possible norms. They also provided policy relevant and credible analyses that informed government representatives and facilitated informed debates on regional arms controls (COARM representatives, personal interviews 2003-07). An example is the already mentioned investigative report on arms brokering that non-governmental actors published in February 1999, *The Arms Fixers* (Wood and Peleman, 1999). The report had been co-financed by the Norwegian government and was a main focus of discussion at the Oslo meeting on arms control that the Norwegian government hosted later that year (Wood, interview, 2004). In turn, the meeting encouraged European states to further pursue brokering controls within the EU context.

### *5.2.a.2 Agenda setting and advocacy efforts*

Non-governmental research and advocacy efforts also contributed to agenda setting on regional arms controls. Saferworld and partner organisations publicly launched a model for a regional code of conduct on arms exports in May 1995 (Saferworld, 1995a, p. 3). The code proposal became the focal point of a broad transnational campaign in the following years (see below) and served as a blueprint for the code proposal that the British government presented to its French counterparts and COARM in 1997. That is, British non-governmental advocates had lobbied frontbench opposition members in the Labour party to develop a policy project on a code if Labour were to win the British elections in 1997. As argued by one of the involved non-governmental experts: the work that had already been done by non-governmental actors in formulating a policy project “meant that when the new government came to power, it was in a position to move quickly with a clear agenda. If the plan hadn’t existed, I don’t think it would have tabled the code during the British EU presidency” (Eavis, interview, 2002).

Non-governmental actors continued their research activities and the provision of technical knowledge in the decade following the adoption of the EU Code. This included the detailed scrutiny of the code’s implementation by EU states and the further publication of reports. A recent example is a 2008 report by European NGOs that provided a critical assessment of the implementation of the EU Code and the progress in strengthening its provisions (Saferworld, 2008). In addition, NGOs provided detailed accounts of specific control challenges that governments debated within COARM. Examples are publications in the mid 2000s that focused on the implementation of individual code criteria such as the criteria on sustainable development and the risk of diversion (Control Arms, 2004b; Saferworld, 2006 and 2007). As previously, non-governmental advocates followed-up on their research activities by directly engaging



governmental officials and presenting their findings at informal workshops and seminars on the EU Code that were regularly organised between COARM officials and non-governmental actors.

The role of public advocacy on conventional arms controls in the EU also deserves mentioning. The launch of the model code on arms exports in 1995 was followed by outreach activities by Saferworld to various non-governmental partners in the UK and other European states as well as at the regional level. One strategic partner was national and European parliamentarians. The involvement of parliamentarians was important in Saferworld's view inasmuch as it would underline the argument that national arms export policies should be subject to democratic scrutiny. Specifically, parliaments at national and the European level should monitor governments in their implementation of export policies and hold them to account for their actions in light of multilateral commitments (Eavis, interview, 2002). The success of Saferworld's outreach activities was reflected in the growing number of individual parliamentarians and resolutions in parliaments at national and European levels calling for a regional code on arms exports in 1995-97 (see above and chapter six).

Further strategic partners in the campaign for a code on arms exports were other non-governmental organisations. By joining resources, non-governmental organisations could enhance the spread and potential impact of their advocacy work. The outreach activities by Saferworld were highly successful. A network of over 600 European NGOs emerged that endorsed the campaign within several months of its launch (Saferworld, 1995a, p. 3). The support by large membership-based organisations such as Oxfam, Amnesty International, or Save the Children was of particular benefit because they operated offices in various European countries. They could mobilise constituencies to which Saferworld had no access. The growth of the advocacy network

was facilitated by the growing regional recognition of the adverse consequences of arms proliferation that mobilised organisations and constituencies that had no previous history in arms control. The broad thematic and geographic spread of network members meant an increase in specialised knowledge about specific aspects of the arms trade, of the various national regulations and practices on arms control policies, as well as the political environment in which these policies were formulated (Eavis, interview, 2002).

Public advocacy activities by members of the campaign for the code included parliamentary questions as well as press conferences and the collection of signatures among the public. Similar activities were carried out in the years following the EU Code's adoption. Of interest here is the continued advocacy on brokering controls. Non-governmental advocates criticised governments for their 'failure' to adopt brokering controls in the 1998 EU Code (Saferworld, 1998a, p. 2 and 1998b, p. 2). The following year, they published a detailed policy report that highlighted the role of brokers in arms embargo violations and identified concrete measures that EU member states should adopt in response (Wood and Clegg, 1999). The European Parliament participated in the calls for brokering controls in its yearly resolutions on EU arms export controls since 2000 (European Parliament, 2000, p. 10). In 2002, NGOs and NGO networks from some seven EU states launched a campaign to advocate high common standards in the context of EU negotiations of a common position on arms brokering controls (Agir Ici, 2003). Their activities included press conferences and two coordinated letter-writing campaigns to their respective COARM representatives. The letters were sent to coincide with the COARM meetings in February and May 2003.

### *5.2.a.3 Participation in and access to inter-governmental debates*

Governments increasingly accepted non-governmental advocates as credible policy actors and participants in debates on regional arms control in Europe. Saferworld and partner organisations approached governments directly in the campaign for a European code on arms exports in the mid 1990s. It was often the first time for non-governmental advocates as well as governmental officials to exchange views on conventional arms controls (Eavis, interview, 2002; Estévez, interview, 2003). The aim of non-governmental advocates was to identify sympathetic and potentially sympathetic governments and to foster consensus among them so as to enhance their position on joint policy objectives. By building consensus amongst them, the governments would be on stronger grounds from which to rally other governments around their cause. The key advocacy tool in this regard was the organisation of seminars. The seminars brought together senior civil servants and other key policy makers from sympathetic countries to discuss the need for a common European policy on arms export controls. The seminars included the COARM representatives of Germany, the Netherlands, Sweden, Belgium, and Ireland, that is, states that had expressed their sympathy for restrictive common arms export policies.

Non-governmental experts were also invited to co-chair COARM workshops that provided space for detailed policy discussions outside institutional frameworks. Direct contact with government officials allowed policy advocates a better understanding of governmental thinking and positions on arms export controls. In turn, government officials could benefit from the technical knowledge and in-depth understanding of control issues by non-governmental policy experts (Eavis, interview, 2002; Greene, interview, 2002). The cooperation with non-governmental actors allowed sympathetic governments to enlist transnational support for their own positions. The Dutch

government, for example, consulted with non-governmental policy experts about the idea of an EU program to address arms trafficking before launching the idea within COARM in 1996. The Dutch government could subsequently strengthen its position in COARM with the argument that the proposal would have transnational support among non-governmental policy experts (Greene, interview, 2002).

The acceptance by governments of non-governmental actors is also reflected in the partial access advocates were given to the negotiations of the EU Code and the common positions on brokering controls in 2003 and military export controls in 2008. The actual negotiations within COARM took place behind closed doors. But ‘friendly’ governments leaked drafts of the texts to non-governmental advocates. This allowed advocates to closely follow the discussions as well as to submit to and lobby their national governments for specific policy elements. This included public criticisms of government positions that advocates considered inadequate. Saferworld, for example, criticised the text the British government proposed for the EU Code in a press statement in early 1998. This led to a complaint by the British Foreign and Commonwealth Office that Saferworld was undermining the government’s position both at home and on the EU level (Eavis, interview, 2002).

#### *5.2.a.4 Analysis*

The roles of non-governmental advocacy actors in normative developments in the EU since the early 1990s were limited inasmuch as these actors were excluded from formal negotiations within COARM. But the influence of these actors within the given constraints is surprising from a traditionalist perspective. Individual non-governmental policy experts were active participants and closely involved in the debates since the beginning of processes in early and mid 1990s. Importantly, non-governmental actors

were the principal drivers behind the argument that states had a moral responsibility to ensure that EU arms exports would not be used in violation of UN embargoes and human rights. The moral leverage exerted by non-governmental actors was amplified to the extent that advocacy actors could convincingly claim to represent large numbers of the electorate in EU states. The acceptance of non-governmental actors as integral participants in policy debates was facilitated by the credible information they provided that demonstrated how poor controls in EU states could have undesirable effects abroad. The research and detailed advocacy on control challenges and solutions also contributed to the conceptual development of control norms.

The participation of non-governmental policy experts in intergovernmental debates is also illustrated by the repeated contacts and seminars between non-governmental advocates and COARM representatives. For example, meetings held in the mid 1990s did not lead to an immediate support by governments for the idea of an EU code on arms exports. The code was often greeted with scepticism and even sympathetic governments initially judged its objectives as too ambitious. But the seminars provided an open space for informal discussions and “allowed for ‘open’ thinking--rather than trotting out government positions” (Estévez, interview, 2003). Ideas and arguments could be developed more easily than was the case within the consensus-bound forum of COARM itself. The seminars served therefore as a catalyst for the emergence of governmental policy coalitions that shared policy aims with non-governmental advocates. Non-governmental advocates could thereby also encourage governments that might otherwise not have done so to publicly support certain policy proposals (*ibidem*). By finding allies in governments sympathetic to the aims of non-governmental advocacy, non-governmental advocates could contribute to setting governmental policy agendas at the national and, subsequently, EU level.

In addition, technical and public advocacy actors provided leadership roles in building the political momentum towards the EU Code of Conduct. That is, nongovernmental advocates were critical in preparing the ground for the initiative of an EU Code by the newly elected UK government during its presidency of the EU in 1998 (see above). By lobbying British parliamentarians and government officials, non-governmental advocates successfully encouraged British officials to pursue the idea of the code at the regional level. The change in the national position of the UK and the broad transnational campaign for an EU code were important drivers of normative developments themselves (see above). Similarly, non-governmental advocates were critical actors in the development of multilateral controls on arms brokering. Advocates called and made detailed proposals for regional brokering controls several years before the issue was established on the COARM agenda. The strategy employed by policy experts to promote multilateral norms as a means to strengthen controls in their home state reflects the attempt to achieve a ‘boomerang pattern’ (see chapter two and below).

In summary, the roles of non-governmental advocates as integral participants and, in some respects, key drivers of normative developments in the EU in the last two decades do not fit easily with traditionalist expectations. The influence of non-governmental advocacy in these regards is especially noteworthy because it took place in areas directly affecting national security interests. The analysis provides evidence therefore for an increased willingness of states to cooperate with non-governmental actors in the field of conventional arms control. It also confirms an increased significance of non-governmental actors in the governance system on conventional arms control in the EU.

### **5.2.b Policy impact of non-governmental advocacy**

The non-governmental advocates who developed the idea for a European code of conduct in the early 1990s pursued three principal aims. First, the code was to build on and strengthen the Luxembourg and Lisbon criteria. Second, the code was to include mechanisms for the continued exchange of information among states on the arms exports they granted and denied. This would foster continuous debate and consensus among states on how they interpreted common export criteria. Third, states would be obliged to annually report on their arms exports. As explained by one of the non-governmental experts behind the idea of an EU code, one of the main weaknesses in European arms control was the lack of transparency.

The reporting mechanism would challenge the secrecy surrounding the arms trade. Once adopted, non-governmental advocacy could be directed at making the annual consolidated report of the EU publicly available. As states would be committed to drawing up annual national reports, advocacy could then also be directed toward the publication of these national reports. This would allow domestic political constituencies to measure the export record of their governments against their commitment under the code (Eavis, interview, 2002). It also illustrates the aim to achieve a ‘boomerang’ effect by using multilateral developments as a means to strengthen domestic transparency (see chapter two).

The negotiations of the EU Code in late 1997 / early 1998 offered non-governmental advocates an important opportunity to advocate a range of specific standards. The strategic priority for non-governmental policy experts was the adoption of an at least politically binding instrument that would contain operative provisions facilitating future developments. Of particular importance in this respect were denial notification mechanisms as well as the regular and detailed public reporting by EU

states. The strategic priorities were complemented with several public advocacy aims seeking to establish high common standards.

One such public advocacy aim was the adoption of a legally binding instrument to promote the harmonised implementation of the code's provisions across the EU. In relation to export criteria, advocates called for more restrictive formulations. They also called for the adoption of a clear commitment that would prevent the export of arms to destinations and end-users who did not respect human rights and international humanitarian law. Other public advocacy aims were the introduction of comprehensive controls on arms brokers as well as on the production of arms abroad under a license from manufacturers established in the EU (Eavis, interview, 2002). Advocates argued that extending controls to these actors and activities abroad was required to fully respond to the moral obligation of preventing that EU states inadvertently contributed to undesirable effects in other parts of the world.

The comparison between non-governmental advocacy aims and the norms that states adopted since the late 1990s shows that strategic priorities were often realised. By the late 2000s, there existed a dynamic and evolutionary process on arms export controls at the EU level. A particular success of non-governmental advocates was the adoption of the EU Code by states in 1998. The early involvement of non-governmental advocates in the project to establish an EU code allowed them to convince governments that further governmental cooperation needed to be based on dynamic processes. This strategic vision found its expression in the mechanism for information exchanges under the EU Code as well as the obligation to draw up annual national reports on arms exports to be submitted to the EU Council. The aim of advocates to use the multilateral



reporting requirement as a step to dismantle the secrecy surrounding arms exports was also partially realised (see chapter six).

Another example of the evolutionary process that non-governmental advocates called for was the adoption of common understandings and the further detailing of arms export criteria in the EU User's Guide on the code on arms exports. States adopted common understandings in COARM in some instances that were directly inspired by what non-governmental advocates had lobbied for. One such instance are the factors and indicators that states agreed to consider when assessing the potential impact of an arms export on the prospects for sustainable development in the recipient state. COARM used a publication by non-governmental advocates on the issue as a basis for their discussions (COARM representative, interview, 2006).<sup>16</sup> The adopted common understandings closely reflected what advocates had proposed.

The following sub-sections provide a more detailed overview of non-governmental advocacy success in key advocacy areas. The first sub-section focuses on advocacy impact in relation to export criteria and transparency, that is, areas that directly affect and constrain national flexibility in conventional arms transfers. The second sub-section looks at controls on arms brokering and licensed production abroad, that is, areas that extend national controls to actors and activities concerning the production of and trade in arms abroad.

#### *5.2.b.1 Export criteria and transparency*

The analysis of the policy impact of non-governmental advocacy on export criteria and transparency reveals mixed results. Non-governmental advocates failed to see their policy aims realised in relation to the adoption of export criteria and operative

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<sup>16</sup> The proposals made by non-governmental advocates were based on a report by Control Arms (Control Arms, 2004b).

provisions in a legally binding EU Code in 1998. Public advocacy aims also failed to fully materialise in relation to detailed criteria on human rights and international humanitarian law in the EU Code. As indicated, the Code makes a reference to human rights but not to humanitarian law. A decade later, states had changed their positions in these respects. The 2008 EU Common Position is a legally binding instrument and introduces the advocated reference to international humanitarian law.

A similarly incremental process and mixed advocacy successes underpinned the maturing of transparency norms. Non-governmental advocates successfully promoted a politically binding obligation to confidential, inter-governmental reporting at the multilateral level but failed in their advocacy of public reporting at national and multilateral levels in the 1998 EU Code. The common position adopted a decade later still does not establish a commitment to the publication of national reports but includes legally binding obligations on states to report to the EU Council and to publish the consolidated multilateral reports.

The adoption of legal obligations to provide national reports and to publish the multilateral reports was facilitated by the already existing practices of states in these regards. As indicated, the EU Council published the consolidated reports since 1999. The increasing detail in the multilateral reports influenced and was influenced by the maturing of transparency norms at national levels. Although the multilateral reports continue to be less transparent than what advocates called for, they contain many of the subsidiary norms and elements promoted by advocacy actors (see chapter six). Indeed, the transparency on exports by EU states was significantly greater in the late 2000s than was the case in the early and mid 1990s.

The normative developments on export criteria and transparency illustrate the potential success of long-term advocacy. Individual non-governmental policy experts

encouraged and advised interested governments and coalitions of the willing since the early 1990s. Their involvement in strategic policy discussions facilitated the identification of feasible multilateral compromises that supported the continued maturing of norms. The developments also illustrate the effectiveness of the moral leverage exerted by public advocacy actors and their success in arguing that states had a moral responsibility to prevent undesirable effects of their transfer abroad. The advocacy impact of non-governmental actors in these areas is especially noteworthy because of the highly constraining nature of the norms that states had agreed to by the late 2000s.

#### *5.2.b.2 Controls on brokering and licensed production abroad*

The characteristics of controls on brokering and foreign licensed production are different from those of export controls and transparency inasmuch as the former issues relate to transfers and activities carried out abroad. Controls on brokering and foreign licensed production therefore cover actors and activities that operate under the sovereignty of other states. States opposed to mature norms on these issues argued that controls would not be cost-efficient in light of their limited capacities to control transfers and actors abroad. The greater difficulties in effectively controlling brokers and licensed production as opposed to exports from the national territory help explain why states did not adopt relevant standards in the 1998 EU Code. Ten years later though, non-governmental advocacy aims were at least partially realised.

Advocates welcomed the 2001 EU guidelines on brokering but criticised them as not going far enough. Their continued advocacy contributed to the agreement between states to further develop common standards. During the negotiations of the 2003 EU Common Position, advocates urged governments to adopt legally binding controls of

brokering-related and extraterritorial brokering activities as well as a registration requirement for brokers (Smith, interview, 2003). They failed in their advocacy of controls on brokering-related activities as well as binding commitments to the registration of brokers and the control of their extraterritorial activities. They did see their strategic priority realised however that states legally committed to establishing national brokering controls.

Similar progress was made in relation to controls on foreign licensed production. Advocates continuously promoted a licensing requirement for “any attempt by an EU entity to set up a foreign production facility, with strict controls placed on production ceilings and potential markets”. They further urged governments to insist “that EU parent companies retain control over the arms transfer decisions of any non-EU entities over which they wield effective control” (Saferworld, 2008, p. 20). The 2008 Common Positions integrates controls on licensed arms production abroad but governments did not go as far as advocates had urged. States did not agree to controls on production ceilings, potential markets, or transfer decisions by foreign entities under the authority of EU companies.

The normative developments on controls on brokering and licensed production again illustrate the success of long-term advocacy in encouraging and advising interested governments and coalitions of the willing. The continued advocacy of non-governmental actors at multilateral and national levels facilitated the adoption of legal commitments in all EU states to operate common standards. At the same time, there remained clear limits to the impact of moral leverage by non-governmental actors. Individual states remained unconvinced that individual control issues such as extraterritorial brokering or production ceilings for licensed production deals were serious challenges and/or justified the introduction of the advocated controls. The

particular enforcement challenges related to such controls helps explain why progress in their maturing was limited.

### *5.2.b.3 Analysis*

The analysis of the policy impact of non-governmental advocacy on normative developments in the EU reveals a surprising result from a traditionalist point of view. The success of non-governmental advocacy remained limited in especially technically complex areas involving controls on actors and activities abroad. But non-governmental actors succeeded in seeing many of their strategic priorities materialised in over a decade of technical and public advocacy in the EU. This result is not expected by traditionalists in areas that constrain national flexibility and secrecy on conventional arms transfers. The impact of policy experts was facilitated by their insider access used to educate states on control challenges and to encourage interested states to take leadership roles in the promotion of norms. That governments frequently consulted non-governmental experts on strategic approaches demonstrates the value placed on their advice by interested governments. The moral leverage exerted by policy experts was clearly amplified by the efforts of public advocacy actors.

As indicated then, there are parallels between the dynamics that underpinned the policy impact of non-governmental actors at the level of the EU and the global level. At the same time, advocacy actors were considerably more successful in their moral leverage in the EU if compared to the global level. This is demonstrated by the comparatively higher maturity of EU norms on transfer criteria, transparency, and brokering controls (see chapter three). The differences in impact point towards an important condition that influenced the success of non-governmental advocacy. Specifically, it demonstrates that the argument of moral responsibilities of exporting

states had a higher resonance in EU states and societies than in states such as China, Egypt, Iran, Pakistan, or the Russian Federation. In other words, the democratically elected governments of EU states were less resilient to non-governmental pressures to agree to controls that would better promote security and stability abroad.

Another important condition that influenced the impact of non-governmental actors and deserves further mention was the difference between ‘radical’ and mainstream advocacy actors. The former category of actors included NGOs that advocated not greater controls but an end to the arms trade. For example, members of the European Network Against the Arms Trade openly criticised the EU Code campaign in the 1990s for legitimising transfers of increasingly high volumes of military equipment within the Western World. They also doubted that the EU Code would lead to effective restraint in arms exports by EU states (Feltham, interview, 2002). At the same time, advocacy actors who pursued radical agendas remained marginalised in the debates that drove normative developments. They did not have the access to debates or the regularity and detail in exchanges that benefited the advocacy of policy experts and organisations that sought to support states in building up their regulatory capacities on conventional arms.

In short, the degree to which at least mainstream non-governmental advocacy actors saw their multilateral policy aims realised in the EU since the early 1990s is surprising from a traditionalist perspective. The analysis of the impact of non-governmental advocacy in the EU provides further evidence therefore for the increased significance of non-governmental actors in the field of conventional arms control.

### **5.3 Conclusions**

Chapter five investigated whether the changes in the EU governance of conventional arms controls since the early 1990s indicate a significant change in the willingness of

states to cooperate with each other and non-governmental advocacy actors. As shown, traditionalist predictions about limits to normative developments and role and impact of non-governmental advocacy actors therein were met in some respects. Consensus-based negotiations repeatedly allowed individual states to block the adoption of normative elements they considered as too intrusive or as little cost-effective. Further, non-governmental actors frequently failed to see their policy aims fully realised. The norms adopted by states often continue to fall below the standards advocated by non-governmental actors. This demonstrates that the moral leverage exerted by non-governmental actors was insufficient to change the positions of states in some respects. A clear example is the lack of governmental support for strengthened multilateral controls on actors and activities abroad such as extraterritorial brokering or foreign licensed production deals. The limits to norm maturity and non-governmental influence on policy debates in the EU illustrate the continued interest among states to retain national flexibility and secrecy in the field of conventional arms control to at least some degree.

Notwithstanding, EU states adopted norms that, in international comparison, are highly mature. Of particular note are the evolutionary character of norms and the increasing acceptance by states of a moral obligation to accept constraints on their national practices. The maturing of multilateral norms also influenced and was influenced by developments at national levels. Non-governmental actors were active participants in policy debates and provided important inputs into the conceptual development of control measures and the mobilisation of political and public support for strengthened controls. Individual experts were closely involved in strategic discussions with interested governments about the scope for strengthened controls and how to achieve principal policy aims. Their activities encouraged governments to take

leadership roles in the inter-governmental promotion of norms and facilitated the efforts of coalitions of the willing. In turn, the pursuit of ambitious policy goals responded to governmental desires in the relevant states to be seen as active supporters of peace and human rights abroad. The developments towards mature multilateral norms on export criteria, transparency, and brokering controls and the key roles and influence of non-governmental actors in the relevant developments are considered unlikely by traditionalists.

As indicated, one major factor that facilitated the normative developments in the EU was the socialisation of states to the argument of having a moral obligation to accept constraints on their national practices on conventional arms control. Specifically, there occurred a change in the understanding of states of what the ‘good’ membership in the EU required of states. That is, states did not consider restrictive controls and transparency as requirements for being seen as behaving acceptably in the EU in the early 1990s. This perception changed over the following two decades. The moral leverage by non-governmental actors and especially by large, membership based organisations and transnational campaigns made an important contribution to this change. Related, the elected governments of Western democracies were more open to the argument of having moral responsibilities in relation to legal transfers of conventional arms than the governments of states such as China or the Russian Federation. Other major factors that were indicated included inter-governmental peer-pressure, the learning by governments from the experiences in other states, and the education by non-governmental actors on challenges and possible solutions.

The overall analysis suggests that there were limits to the developments in the EU governance of conventional arms. But the developments were still more profound than what would be expected in the field of conventional arms control. National security



interests significantly changed in EU states in the sense that normative elements that were initially rejected as too intrusive or costly were eventually agreed to. States increasingly accepted constraints in response to their desire to be seen as operating arms control standards that were acceptable in the view of at least other EU governments. In addition, the role and impact of non-governmental advocacy actors clearly suggests their importance in the normative processes in the EU since the early 1990s. The findings consequently support the claim that the changes in the willingness of states to cooperate with each other and with non-governmental actors are significant.

Indeed, the analysis suggests again that normative developments and the influence of non-governmental advocacy actors in the security sphere are similar to what neo-liberal institutionalists and constructivists identify in areas of 'low' politics. Further, the analysis highlighted the importance of inter-subjective dynamics between governments and between governments and non-governmental actors. It was especially socialisation dynamics that influenced the emergence of changed understandings of moral obligations of EU states in their arms controls (see also chapter six). In terms of social constructivism, the outcomes therefore also demonstrate that changes in security governance can be shaped in ways similar to that identified by constructivists in relation to for example human rights and the environment. Chapter five consequently provides further evidence for the claim that the traditionalist approach of separating actors and processes in the security sphere from those in areas of low politics seem little justified.

## **Chapter 6: National non-governmental advocacy in the EU**

Chapter six asks whether the impact of non-governmental actors in the promotion of norms at national levels in the EU since the early 1990s confirms their increased significance in the governance of conventional arms control. It thereby complements the research on global and EU-regional advocacy by non-governmental actors provided in chapters four and five. The chapter's first section elaborates on the analytical framework that underpins the subsequent research.

The second section investigates the degrees to that non-governmental policy actors established themselves as active participants in national control debates and their success in influencing the structural conditions in which they operate. The analysis restricts itself to the comparative analysis of the relevant developments in twelve EU states, that is, Austria; Belgium; the Czech Republic; Germany; France; Italy; the Netherlands; Poland; the Slovak Republic; Spain; Sweden; and the UK. They are the largest EU arms exporters and are listed among the global top 30 suppliers of major conventional weapons (SIPRI, 2006, p. 481).

The third section sharpens the focus by providing an in-depth analysis of developments in the UK. The choice of the UK is justified by the high level of success of non-governmental actors in improving the conditions of their participation in policy debates with the UK government (see below). The UK case study thereby also allows for investigating whether the favourable structural conditions for non-governmental advocacy resulted in a high level of policy impact of advocacy actors on national arms controls.

Regrettably, there is insufficient space to complement the UK case study with other national case studies in the EU and to elaborate on the research conducted for this project in relation to normative changes and non-governmental advocacy in states that

included Austria and France. Notwithstanding, the conclusion of this chapter integrates some of the findings of this research in relation to Austria and France to better put the UK case study into the EU context.

## **6.1 Analytical framework**

The non-governmental campaigners who initiated the campaign for an EU code of conduct on arms exports in 1995 had ambitious goals. The EU code was to promote the harmonisation of national export standards at a high common level. The reporting mechanisms under the code were to promote the emergence of sustained and regular domestic debates on the national arms export policy. Campaigners saw a sustained public debate between the government, the parliament, and the public as an important element for strengthening restraint and accountability in the government's implementation of the national policy. A sustained dialogue would also promote the practice that governments had to justify their policy decisions. A dialogue in which governments would have to argue their case would facilitate parliamentary and NGO efforts to 'chip away' at the arguments of governments and to gain concessions in policy debates (Eavis, interview, 2004: and Eavis and Isbister, interview, 2005).

In other words, non-governmental arms control advocates understood sustained public dialogues at national levels as a key to improving the conditions under which parliaments and NGOs could influence their governments on national arms export policies. They argued that parliaments and the broader public took notice of conventional arms exports only in cases of arms export scandals. The ad hoc nature of such parliamentary and public interest did not promote the regular and sustained dialogue that was necessary to establish greater accountability in the arms trade. In contrast, a regular dialogue would significantly enhance the ability of parliaments and

NGOs to critically engage the government on the national export policy and pressure for change. A regular dialogue would also facilitate efforts to maintain parliamentary and public interest in their governments' implementation of national arms export policies (Eavis, interview, 2004).

The analysis of possible changes in national debates on arms controls requires greater conceptual clarity of 'national debates' and possible ways to measure changes therein. A national debate on arms export controls is the framework within which stakeholders exchange views on the national export policy and its implementation. Prominent stakeholders and possible participants in public debates include the government, the parliament, and NGOs. Exchanges of views may include reports and responses by governments to parliamentary questions and public criticism, parliamentary resolutions, reports, and hearings of officials, as well as reports and campaigns by NGOs. National debates differ in levels of participation by stakeholders. These levels are a function of the quantity and regularity of exchanges as well as the detail of the information that is contained in the exchanges. The levels of participation also define the 'quality' of national debates (see below).

The quality of debates can change over time with changes in the levels of participation by stakeholders. An example is the development of the debate on arms export controls between the EU Council and the European Parliament. In the mid 1990s, the debate took place at a low level of quality with only few and ad hoc exchanges of views. There was no public annual report on exports by EU states. A decade later, the EU Council published detailed annual reports that are addressed to and presented in the European Parliament. The EP responded to the consolidated EU Council report with its own annual reports and resolutions that were adopted in the plenary (see, for example, European Parliament, 2006). The levels of participation of

the EU Council and of the EP changed therefore from low to medium and high levels respectively. The debate at the level of the EU thereby moved towards a greater level of quality.

Table 18 below lists indicators and the resultant levels of stakeholder participation in national debates. There exist other possible stakeholders and indicators for changes in the debates.<sup>17</sup> Nevertheless, the restricted focus used here still allows for providing insights into differences between and changes in national debates within the given space constraints. A low level of governmental participation exists if the government does not publish an annual report on arms export and the national export policy. A high level exists if the government publishes detailed statistical information on arms exports on a six-monthly or shorter basis. Similarly, participation levels of parliaments and NGOs can, depending on the detail and regularity of their exchanges of views with governments, range from low to high levels. The discussion of participation levels is of relevance to this research inasmuch as the access of non-governmental actors to national debates is a necessary though not sufficient condition for their potential influence on governmental policy choices.

**Table 18: Indicators of participation levels in national debates on arms exports**

<b>Stakeholder / Participation level</b>	<b>Low</b>	<b>Medium</b>	<b>High</b>
<b>Government</b>	- No or rudimentary information on arms exports and policy	- Annual arms export reports providing standard transparency	- Biannual or more frequent release of detailed export data
<b>Parliament</b>	- No debate of policy within parliament - No debate of policy with government	- Intra-parliamentary debate of export reports - Occasional hearings of government officials	- Annual report on national export policy - Frequent hearings of government officials
<b>NGOs</b>	- No assessment of	- Public reaction to	- Annual report on

<sup>17</sup> Other possible stakeholders and indicators include arms manufacturers and trade unions as well as the openness of stakeholders to engage with each other and listen and respond to the arguments of the other participants in the debate. Differences may also exist in relation to importance governmental stakeholders attribute to the arguments of various stakeholders. For example, governmental stakeholders may be more open to pressure by ‘mainstream’ non-governmental advocates than by anti-arms trade actors (see also chapter five).

	national export policy - Few or no policy and research reports	export report - Occasional policy and research reports	national export policy - Frequent policy and research reports
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## 6.2 Quality of national dialogues in selected EU member states<sup>18</sup>

The conditions for a sustained national debate on arms export controls existed in few if any European states in the early and mid 1990's. In Belgium, Italy, the Netherlands, Spain, and Sweden, the governments formally informed the parliament in sometimes confidential summaries about the implementation of the national export policy (Belgium, 1991, art. 14 (prior to amendments), Italy, 1990, art. 5.1 and 5.3, and Spain, 1995).<sup>19</sup> The French and German governments informed the parliament on the financial value of arms exports that had been granted in the previous year as part of the annual debate on the national defence budget (Muracciole and Lindner, interviews, (see fn. 18)). In Austria, confidential summary information on licensed arms exports was submitted to the National Security Council that brings together governmental officials and parliamentary representatives (Reininger, interview (see fn. 18)). However, the information released by governments usually did not allow for the identification of the value, quantity, and type of exported equipment to each export destination.

Sweden was the only state in which the parliament had a formal role in the implementation of the national policy. The Advisory Board on Exports of Military Equipment brought together government officials and representatives of the political parties in the parliament. The board's role was to advise the government on specific

<sup>18</sup> Methodology note: Part of the information contained in this chapter was collected and verified in a series of personal interviews, telephone conversation, and e-mails with government and non-governmental policy experts from the selected states in April to December 2006. The respondents included Ilhan Berkol, GRIP; Patrice Bouveret, Observatoire des Transferts d'Armements; Albert Carames, Escuela de Cultura de Paz; Paul Eavis, Roy Isbister, and Goska Wasilewska, Saferworld; Emilio Emollo, Archivio Disarmo; Stefan Hanson, Inspectorate of Strategic Products; Rolf Lindahl, Svenskafreds; Robert Lindner, Oxfam – Germany; Benoît Muracciole, Amnesty International - France; Barbora Pechotova, Transparency International – Czech Republic; Thomas Reininger, Internationaler VersöhnungsBund - Austria; Daan Schoemaker, Amnesty International – The Netherlands; Frank Slijper, Campagne tegen Wapenhandel; and Przemyslaw Wyganowski, Permanent EU representation of Poland.

<sup>19</sup> Additional information collected in interviews (see fn. 18).

export applications that required a decision of principle on the national policy. The aim was to facilitate a political consensus between the government and the parliament (Lindahl and Hanson, interviews, (see fn. 18)). In contrast, the involvement of parliaments in other states was largely restricted to the tabling of parliamentary questions on the national export policy and/or specific export licenses in the context of export scandals. Also, there were generally no regular public debates in parliaments about the national policy, including in states where governments released summary data on arms exports (Interviews (see fn. 18)).

As for NGOs, few had active research or advocacy projects on conventional arms controls in the early 1990s. The NGOs that were active in conventional arms controls largely operated individually and their arms control activities were often conducted on an ad hoc basis. There began to emerge national networks of NGOs in Belgium, France, Germany, Italy, the Netherlands, Spain, Sweden, and the UK in 1995 to 1997. The networks rallied around the campaign for a European code of conduct and called for mechanisms for the scrutiny of the national export policies (*ibidem*). Similar to parliaments though, NGOs and NGO networks did not regularly and publicly voice their views and opinions on the national export policy.

The following sub-sections review the participation levels of stakeholders in their respective national debates by the mid 2000s. In relation to governments, the review identifies whether there exists a national reporting obligation on arms exports and the binding character of this obligation, whether the reports are restricted to the inter-governmental level, are made available to the national parliament, or are available also to the public, as well as the regularity and detail in the reporting. In relation to parliaments, the review identifies whether reactions to governmental information on

arms exports are limited to parliamentary questions or extend to hearing of officials and parliamentary reports as well as whether parliamentary reactions emanate from the plenary or a joint of single committee. In relation to NGOs, the review identifies whether their reactions are limited to press statements or extend to the publication of critical reviews of the governmental reports and implementation of the national export policy.

The assessment of the various participation levels allows for the subsequent comparison of the quality of national debates. In turn, this allows for identifying the degrees to that non-governmental actors succeeded in improving the structural conditions within which they seek to influence governmental policy choices in their respective states.

#### *6.2.a.1 Participation by governments in debates in the mid 2000s*

By the mid 2000s, it was an established good practice among EU member states to publish reports that provide summary information on the national arms export policy and on the exports that were licensed in the preceding year. Poland was the only state that did not nationally publish at least the statistical data on licensed arms transfers that is submitted to the EU Council. Austria published the statistical data but not an annual report with a narrative text that would summarise the data, identify trends in national exports, or review changes in the national export system.<sup>20</sup> At the same time, Austria was one of the states that had provisions for reporting in the national arms export legislation. The Austrian Ministry of the Interior is required to annually inform the Austrian National Security Council about licensed transfers of ‘war materials’ (Austria, 2001, art. 3.a). The reports remained confidential and were not publicly accessible.

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<sup>20</sup> The annual statistical data for national arms exports that the Austrian Ministry of Foreign Affairs releases is available at <http://www.bmeia.gv.at/index.php?id=64653&L=0>



Another state with legal reporting provisions on arms exports is Belgium. Until 2003, Belgium's legislation stipulated that the federal government had to annually submit to the parliament a confidential report with summary information on licensed arms transfers and the national policy on arms exports. Additional six-monthly reports had to be submitted to the parliament with data on the total number, financial value, category, and export destination for granted licenses (Belgium, 1991, art. 14 (prior to amendments)). Since 2003, it is the regional governments of Wallonia, Flanders, and Brussels that are obliged to submit such reports to their regional parliaments (Belgium, 2003). Italy's legislation obliges the government to annually report on licensed arms transfers to parliament. The reports must identify the type, quantity, value, and destination of licensed transfers and provide information on the activities of commercial entities that are authorised to produce and trade in military equipment (Italy, 1990, art. 5.1 and 5.3). The reports are publicly available.

Legislation in the UK stipulates that the government has to submit to parliament an annual report on the implementation of strategic export controls. It was practice in the UK by the mid 2000s that the publicly available reports contain statistical information on licensed arms exports and a narrative text on the national arms export system.<sup>21</sup> In Germany, the government committed to annually publish a report on the implementation of the national export policy under the political guidelines on arms exports that were adopted in 2000 (Germany, 2000). The governments of the Czech Republic, France, the Netherlands, the Slovak Republic, Spain, and Sweden published annual arms export reports without a requirement under national law or a commitment in national political guidelines on arms exports (Czech Ministry of Foreign Affairs, 2005; French Ministry of Defence, 2005b; Government of The Netherlands, 2005;

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<sup>21</sup> The annual UK arms export reports (strategic export control reports) are available at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029395474>

Slovak Ministry of Economy, 2005; Spanish Ministry of Industry, 2006; and Government of Sweden, 2004).

The general practice for the publishing of national arms export reports in the EU was once a year by the mid 2000s. Several governments publish statistical data on licensed arms transfers more often. In the Belgian regions of Wallonia and Brussels, the regional parliaments receive a confidential report on licensed arms transfers every six month. The confidential reports supplement the annual public reports in Wallonia and Brussels (Berkol, interview, (see fn. 18)). The Spanish government submits a public report on licensed arms transfers every six month (Spanish Ministry of Industry, 2006). In the UK, statistical data on licensed arms transfers is published every three months (Government of the UK, 2006). In the Netherlands and the Belgian region of Flanders, statistical data on licensed arms transfers is published on a monthly basis.<sup>22</sup> There are sometimes delays in the reporting. An example is France where a change in government in 2002 delayed the publication of an arms export report to such an extent that data on transfers that were licensed in 2002 and 2003 was only released in early 2005 (French Ministry of Defence, 2005a).

The level of detail governments provide in their public export reports is generally congruent with the level of information that is provided in the EU Council consolidated report. Data shows the combined financial value of nationally granted licenses for each equipment category on the EU Common Military List and for each recipient country. There exist variations. Several states, including Sweden, provide information not only on granted export licenses but also on physical exports during the reporting year (Government of Sweden, 2004). The annual reports by the Brussels and Walloon governments distinguish between public and private recipients, a distinction that is not

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<sup>22</sup> The reports of The Netherlands are available on the website of the Ministry of Economics <http://www.ez.nl>, the Flemish reports at <http://docs.vlaanderen.be/buitenland/deelsites/wapenhandel.htm>

made in the EU consolidated report. At the same time, the annual reports by the Brussels and Walloon regions do not identify the EU equipment categories that are exported to individual export destinations (Walloon Government, 2005; and Berkol, interview, (see fn. 18)).

The reports by the Italian government provide a table on the category, quantity, and value of material that has been licensed for exports. Another table identifies the value of exports to each recipient country (Italian Chamber of Deputies, 2006). No table is provided that would show the equipment category that has been licensed for exports to individual recipient countries. The first report by the Slovak government in 2005 identified the number and total value of licenses for each export destination but not the specific equipment categories that were licensed for exports to individual recipient countries (Slovak Ministry of Economy, 2005).

The continued increases in the levels of transparency at national and multilateral levels were, as previously indicated, underpinned by several processes. States were socialised to the argument that transparency was required if they wanted to be seen as responsible EU member states. Peer pressure and learning processes among states that reduced fears about negative consequences of greater transparency facilitated the further development of transparency norms (see chapter five). In addition, unilateral steps of states in increasing their national standards on transparency allowed them to publicly present themselves as being among the most transparent states on conventional arms control in the EU. The existence of this desire in at least some governments is clearly reflected in the ‘beauty contest’ among EU states to provide greater and more detailed levels of transparency in their national reports than other EU states.

### *6.2.a.2 Participation of parliaments in national debates*

All parliaments were involved in an arms control dialogue with their governments to at least some degree by the mid 2000s. Parliaments have made use of parliamentary questions and ad hoc debates on the national export policy and/or specific exports in the plenary or parliamentary committees. Parliaments in, amongst other states, Austria, Belgium, Italy, Spain, and Sweden also held discussions in the context of legislative review processes (Interviews (see fn. 18)). The UK House of Commons issued several reports in the early 2000s in which it commented on draft legislative proposals that had been presented by the government (House of Commons, 2001b and 2003). Parliaments in states including France, Italy, the Netherlands, Spain, and the UK held ad hoc and sometimes closed hearings with governmental officials on specific arms exports and the national export policy (French National Assembly, 2000 and House of Commons, 2005).<sup>23</sup>

There are only few states in which there is a regular debate on the national arms export policy that involves the parliament. One of these states is Germany where, in response to the publication of the government's arms export reports, the parliamentary commission on economy and labour, together with the commissions on foreign affairs, defence, human right, and development, drafts a motion for adoption in the plenary. This is complemented with a public debate in the plenary during which parliamentarians and government officials debate the implementation of the national export policy (German Parliament, 2004a-b). The Spanish parliament also responds to the publication of the governmental reports in a public debate in the plenary. This has been complemented with the questioning of government officials in sometimes closed

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<sup>23</sup> Additional information collected in interviews (fn. 18).

hearings by the parliamentary commission on defence and foreign affairs (Carames, interview, (see fn. 18)).

In the UK, a joint committee of the House of Commons bringing together representatives of the committees on defence, foreign affairs, international development, and trade and industry is mandated to scrutinise the government's export reports. The joint committee has organised hearings of officials and other stakeholders and has published detailed reports in response to the export reports by the government (House of Commons, 2005). In the Netherlands, the publication of the government's export reports is followed by confidential consultations between the government and the parliamentary committees on foreign and on economic affairs. Parliamentarians may request oral information on the details of individual arms export licenses during these consultations (Schoemaker and Slijper, interviews, (see fn. 18)). In Sweden, the government and the relevant parliamentary representatives also hold consultations in the context of the annual arms export reports (Lindahl, and Hanson, interviews, (see fn. 18)).

Sweden is also one of two states in which parliamentarians have access to the decision-making process on arms export licenses and can intervene in this process before a decision is reached. The Export Control Council brings together the government, the Swedish export control authority, and representatives of the political parties in the parliament. The council is mandated to advise the export control authority on license applications that require a principled decision about Swedish export policy. The parliamentarians on the council have unrestricted though confidential access to the licensing proceedings (*ibidem*). The other state is the Netherlands. The Dutch government has to consult with the parliament prior to a decision on the export of military surplus equipment by the national arms forces. Dutch parliamentarians are not

consulted prior to decisions on export applications by other state or non-state actors (Government of The Netherlands, 2005).

#### *6.2.a.3 Participation by NGOs in national debates*

In all states, there emerged national NGO networks or working groups on arms export controls that were active participants in policy debates by the mid 2000s. NGO activities included media and other public awareness-raising efforts as well as lobbying efforts to promote greater transparency and restraint in the national arms export policies. A specific focus of advocacy efforts was the promotion of an international Arms Trade Treaty (ATT) in recent years and the collection of signatures among the public as part of the ‘Million Faces Petition’ in support of the ATT. NGOs in Austria, Belgium, Italy, Spain, Sweden, and the UK also actively participated in debates in the context of reviews of the national arms export legislation by publishing detailed policy reports and presenting recommendations to parliamentary committees and government officials (Interviews (see fn. 18)).

NGOs in states including Belgium, France, Germany, Italy, the Netherlands, Spain, Sweden, and the UK regularly and publicly comment on the national arms export reports that are submitted by the respective governments. This may take the form of press statements as well as the publication of summary notes that critically assess the developments in the national export policy against the government’s policy commitments (*ibidem*). NGOs in Germany and the UK publish detailed policy reports of up to one hundred pages and more in response to the governments’ annual export reports. In Germany, the NGO report is written by experts from research centres,

development organisations and arms control NGOs.<sup>24</sup> In the UK, it is a single NGO that takes the lead in compiling an ‘independent audit’ of the government reports (Saferworld, 2005 and 2000a). In France, a research NGO annually published an independent report on French arms exports between 1995 and 2002 (Bouveret, interview, 2006).

### **6.2.b Comparison of the quality of national debates**

By the mid 2000s, most governments submitted public reports on annual arms exports to their parliaments. The only governments that did not submit such reports to their parliaments were those in Austria and Poland. The level of government participation in the national debate in the two states is low therefore. The publication of annual export reports in the Belgian regions of Brussels and Wallonia, the Czech Republic, France, Germany, Italy, and the Slovak Republic suggests a medium level of government participation. The more frequent publication of arms export data in the Belgian region of Flanders, the Netherlands, Spain, and the UK, as well as the consultations with parliament in Sweden prior to export decisions, suggests a high level of government participation.

The level of parliamentary participation in a national debate remains low in Austria and Poland in the absence of annual government reports on arms export controls. The participation level of the Brussels and Walloon parliaments in Belgium, the Czech Republic, France, Italy, and the Slovak Republic also remains low although the governments submit reports to the parliament (Interviews (see fn. 18)). The participation levels of the parliaments of the Flemish region of Belgium, Germany, the Netherlands, and Spain can be considered medium because of the parliamentary debates

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<sup>24</sup> The reports by the ‘Gemeinsame Konferenz Kirche und Entwicklung’ are available at [http://www.gkke.org/cms/front\\_content.php?idcat=23](http://www.gkke.org/cms/front_content.php?idcat=23)

that follow the publication of the government arms export reports (*ibidem*). The participation level of the UK parliament is high because of the regular debates and reports that are published by the parliament in response to the government's export reports. The participation level of the Swedish parliament is also high because of its advisory role in the arms export decision-making process.

The level of participation by NGOs in a regular national debate is low in Austria and in Poland because there is no regular public scrutiny of the governments arms export policies (*ibid.*). The participation level of NGOs is also low in the Czech and Slovak republics despite the publication of the governments of annual arms export reports. The participation level is medium in Belgium, France, Italy, Netherlands, Spain, and Sweden because of the regular public reactions by NGOs to the publication of the government arms export reports (*ibid.*). The participation level is high in Germany and the UK because of the publication by NGOs of detailed reports that scrutinise the government arms export reports and the implementation of the national export policy.

The analysis suggests that the level of quality of exchanges of views between stakeholders in the national debate in the mid 2000s differs between states. The quality level is low in Austria, Czech Republic, Poland, and Slovak Republic because of the low level of participation in the debate by at least two stakeholders. The quality of the debate is medium in the Belgium, France, Germany, Italy, the Netherlands, and Spain because of the at least medium level of participation in the debate by two or more stakeholders. The quality of the debate is high in Sweden and the UK because of the high level of participation by at least two stakeholders in the national debate (see table 19 below).



Table 19 below provides an overview of participation levels and the resultant levels of quality of national debates. To recall the indicators listed in table 18 above, a low level of participation is given if the government provides no or little information on exports to other national stakeholders. A low level is further suggested by a lack of debate within the parliament and between parliament and the government as well as the absence of public scrutiny of the governmental policy by NGOs. A medium level of participation is defined by the provision of annual arms export reports by the government, intra-parliamentary debates and hearings of government officials, as well as public reactions to government reports and occasional research and policy reports by NGOs. A high level of participation is indicated by biannual or more frequent publications by governments of detailed data on arms exports, annual reports and frequent hearing of government officials in parliament, as well as annual reports and frequent policy and research reports by NGOs.

A low level of quality in the national debate is suggested by low levels of participation by at least two actors. Likewise, medium and high levels of quality in national debates are indicated by the respectively medium or high levels of participation by at least two stakeholders.

**Table 19: Participation levels and quality of national debates by the mid 2000's**

	<b>Participation by government</b>	<b>Participation by parliament</b>	<b>Participation by NGOs</b>	<b>Quality of debates</b>
<b>Austria</b>	Low	Low	Low	<b>Low</b>
<b>Belgium-Brussels</b>	Medium	Low	Medium	<b>Medium</b>
<b>Belgium-Flanders</b>	High	Medium	Medium	<b>Medium</b>
<b>Belgium-Wallonia</b>	Medium	Low	Medium	<b>Medium</b>
<b>Czech Republic</b>	Medium	Low	Low	<b>Low</b>
<b>France</b>	Medium	Low	Medium	<b>Medium</b>
<b>Germany</b>	Medium	Medium	High	<b>Medium</b>
<b>Italy</b>	Medium	Low	Medium	<b>Medium</b>
<b>Netherlands</b>	High	Medium	Medium	<b>Medium</b>
<b>Poland</b>	Low	Low	Low	<b>Low</b>
<b>Slovak Republic</b>	Medium	Low	Low	<b>Low</b>
<b>Spain</b>	High	Medium	Medium	<b>Medium</b>
<b>Sweden</b>	High	High	Medium	<b>High</b>
<b>UK</b>	High	High	High	<b>High</b>

### **6.2.c Analysis**

The participation levels by stakeholders in national debates were generally low in the mid 1990s. The debates were therefore of a low level of quality. An exception was Sweden because of the regular engagement between the government and the parliament in the decision-making process on the national arms export policy. It was against this background that non-governmental policy experts formulated the policy aim to improve the quality of national debates by promoting greater governmental transparency. This was to provide a basis for greater scrutiny by parliaments and the public of the implementation of national export policies. In other words, non-governmental actors aimed to improve the structural conditions within which they sought to influence governmental policy choices.

From a traditionalist point of view, the situation in the mid 1990s closely reflected expectations in light of the general absence of sustained national debates on arms export controls: governments retained a large degree of autonomy from non-governmental influences in their implementation of the national export policy. A traditionalist approach would also suggest that the ambitious policy aims of non-governmental actors to increase transparency and involve governments into continued debates were unlikely to be fully realised. This is because the realisation of these aims would significantly limit and constrain governmental autonomy and secrecy in the field of conventional arms exports.

The analysis of developments since the mid 1990s shows mixed results for the policy impact of non-governmental actors and therewith traditionalist expectations. Changes occurred especially in the participation levels of governments with the publication of regular and public reports on arms export controls. In addition, the detail provided in these reports often increased considerably in the last years. As shown in

chapter five, the developments were underpinned by a complex interplay of inter-governmental processes and non-governmental advocacy. They were also underpinned by socialisation processes and peer pressures among states as well as the desire of states to be seen as responsible and transparent actors in the arms trade.

The levels of involvement by parliament and NGOs also increased in many states although to a sometimes lesser extent than those by governments. That is, participation levels of parliaments changed from low to medium levels in Flanders, Germany, the Netherlands, and Spain. In the UK, the level of parliamentary participation changed from low to high. Likewise, participation levels of NGOs changed from low to medium levels in most states. Exceptions are Austria, the Czech Republic, Poland, and the Slovak Republic where levels remained low. Conversely, the participation of NGOs in debates changed to high levels in Germany and the UK.

The overall result of the changes in participation levels is that the quality of national debates increased in many of the selected states during the last decade. Specifically, there existed debates with medium levels of participation by two or more stakeholders in Belgium, France, Germany, Italy, the Netherlands, Spain, and the UK by the mid 2000s. Of particular note is the change in the UK where the quality of the debate moved from a low to a high level. That is, the UK government released information on arms export on a three-monthly basis and submitted detailed public reports to parliament by the mid 2000s. The parliament and NGOs regularly responded to these reports in their own reports (see below).

Nevertheless, it was demonstrated that the publication governmental export reports does not automatically lead to greater parliamentary or NGO participation in a national debate. Examples are the Brussels and Walloon regions of Belgium, the Czech Republic, France, Italy, and the Slovak Republic. Participation levels of parliaments

and/or NGOs remained low in these states despite the publication of governmental reports. This suggests that the publication of arms export reports may offer the possibility for greater national debate, but that the offer is not always taken up by the parliament and/or NGOs.

The analysis confirms traditionalist expectations in relation to states in which the quality of national debates remained low, that is, Austria, the Czech Republic, Poland, and the Slovak Republic. Governments in these states retained a comparatively greater level of autonomy from non-governmental actors in their export controls than those in states with medium and high levels of quality in their debates. Notwithstanding, the structural conditions for the scrutiny of arms exports and non-governmental participation in national control debates improved in most states and, in the case of the UK, even changed from a low to a high level of quality in debates. This outcome is not expected by traditionalists and suggests important changes in the conditions for non-governmental advocacy. In particular, it demonstrates that the conditions for non-governmental access and participation improved significantly in at least the UK.

The question arises then whether the improved structural conditions and success of non-governmental policy experts in promoting this change in the UK also allowed non-governmental actors to have a high level of influence on governmental choices. The following section on normative developments in the UK since the mid 1990s addresses this question as well as the issues of non-governmental leadership and policy impact in changes of the British arms export control system.

### **6.3 Norms and non-governmental advocacy in the UK**

The UK is a state with a high level of quality in its national debate on arms controls. The British government publishes annual arms export reports since 1999 and legally committed to providing parliament with such reports in 2002. The reports contain a high level of detail and are complemented with quarterly reports since 2004. The reports are publicly available on the internet. The UK House of Commons participated in legislative reviews with a range of reports in the early 2000s. A joint committee of the House of Commons organised hearings of officials and publishes detailed reports in response to the export reports by the government. NGOs actively participated in debates on legislative changes and published ‘independent audits’ of the governmental arms export reports.

The high levels of participation of different stakeholders and the consequently high level of quality in the national debate on arms control are not expected from a traditionalist perspective. They do not correspond to the model of the traditional governance of arms controls. The high level of quality in the national debate may also suggest an increased scope for the influence of non-governmental advocacy actors on governmental policy choices. This is because the government is continuously exposed to the detailed and critical scrutiny of non-governmental actors and a need to publicly justify its decisions. The favourable conditions for non-governmental advocacy make the UK a particularly adequate country for a case study of non-governmental advocacy at the national level.

Specifically, this section asks whether non-governmental actors have become increasingly significant actors in the governance of conventional arms export controls in the UK. As previously, this question is complemented with an assessment of the degrees to that non-governmental actors participated, provided leadership, and saw their

policy aims realised in normative developments. The following sub-section investigates major developments and participation levels of non-governmental actors in the UK system of conventional arms control since the early 1990s. The research then turns to a comparison of the positions advocated by non-governmental actors and the control norms adopted by the British government.

### **6.3.a Developments and actors in the UK control system**

The origins of the current UK control system on exports of military equipment can be traced back to the early and mid 1990s. Arms export scandals led to mounting parliamentary and public criticism of the government for its handling of the national policy on arms export. The criticism was driven by allegations of illicit arms transfers and diversions of British military and dual-use goods to Iraq and to Iran in the late 1980s (House of Commons, 1998, sect. I, para. 22). A further scandal occurred in 1992 in the context of a court trial against Matrix-Churchill, a British arms export company. The company executives were accused of having exported dual-use equipment to Iraq in the late 1980s in seeming violation of a British arms embargo that had been imposed during the Iraq-Iran war. The trial collapsed when the judge released documents to the defence indicating that the government had eased restrictions on defence exports to Iraq and had approved the exports in question as part of an intelligence operation (British Broadcasting Corporation (BBC) News, 1996a).

The collapse of the trial led to calls for a public inquiry into the ‘arms to Iraq’ case. The government was accused of having lied to parliament when previously questioned in the House of Commons whether it had eased arms embargo restrictions imposed on Iraq in the months following the cessation of the war. The government was criticised for having tried to withhold information on the intelligence nature of the exports and

their approval by ministers to avoid a public scandal about its arms export policy (Saferworld, 1995b). The government mandated Lord Judge Scott to conduct the inquiry in November 1992. The report of the inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq (the Scott report) was published in February 1996 (Scott, 1996).

The Scott Report confirmed critics of the government's arms export policy by arguing that ministers had relaxed guidelines on exports of lethal equipment to Iraq and failed to acknowledge this when questioned by parliament (*ibidem*). The reason for this concealment, Lord Scott concluded, was the government's "fear of strong public opposition to the loosening on the supply of defence equipment to Iraq and a consequential fear that the pressure of the opposition might be detrimental to British trading interests" (quoted in Saferworld, 1996a). The report criticised the national export control system for remaining based on legislation adopted on the eve of the Second World War, for lacking in democratic accountability, and for lacking in co-operation between relevant ministries in decision-making procedures on arms exports. The report led to a debate in the House of Commons ten days later.

The government avoided defeat in a vote of censure over the findings. But it accepted the arguments of the Scott Report for the need for a review of regulations on arms export policy and transparency on arms exports. The government committed the ministry of defence to a review of the level of detail it could provide to parliament on authorised arms exports. It also committed the Department for Trade and Industry to the submission of a green paper to provide the basis for further discussions on changes to the arms export system (Saferworld, 1996a, p. 2). The review by the ministry of defence was concluded by June 1996. The ministry reaffirmed that information on arms exports would be available in response to parliamentary questions. Further information

could be withheld if its release “would jeopardise national security, the legitimate security concerns of importers, the competitive position of British exporters, or British relations with other countries” (cited in Saferworld, 1996b). The ministry rejected, therefore, the proposal to publish an annual report on arms exports as was already done by states including the USA, Belgium, and Sweden.

The Green Paper on Strategic Export Controls was published in July 1996 to request comments from industry and other non-governmental stakeholders about possible improvements to the strategic export control system (House of Commons, 1998, sect. I, para. 23). The Green Paper expressed a “growing concern about trafficking or brokering activities” and requested comments on possible future legislation (*ibidem*, sect. III, para. 33). The pertinence of the brokering issue was highlighted when allegation surfaced in the media the same year that a UK company had been implicated in the trafficking of arms to Rwanda in violation of the UN arms embargo. The case, which led to an interdepartmental inquiry and debate in parliament (House of Lords, 1997), demonstrated that UK companies could broker arms to embargoed destinations but remain outside the reach of existing UK law.

The election of the Labour party in the UK general elections in May 1997 acted a major catalyst for subsequent changes in the UK control system. Foreign Secretary Robin Cook had an ambitious agenda to strengthen domestic and multilateral arms control standards. Three months earlier, Labour announced plans for a new approach to the national arms trade policy if elected (Government of the UK, 1999a, p. 2). The eight *Policy Pledges for a Responsible Arms Trade* included the commitments to deny arms exports to regimes that might use them for internal repression or abuse human rights; increase transparency and publish an annual export report; work towards a European Code of Conduct on Arms Exports; and strengthen monitoring of the end-use of



defence exports to prevent diversions or misuse of the equipment (*ibidem*, p. 2-3). The pledges starkly contrasted with then still in-power Tory government policy in relation to, for example, annual reporting on arms exports and support for an EU code of conduct.

When elected, the Labour government continued the review of the strategic export system that had been initiated under the preceding government. In July 1998, the Department of Trade and Industry published the *White Paper on Strategic Export Controls* as a statement of the Labour government's policy. The White Paper invited interested stakeholders to comment on the paper's proposals which presented the government's outline for a new legislative framework on strategic export controls. It explicitly understood itself as a response to the criticisms that were raised in the Scott Report (Government of the UK, 1998, p. 1). The paper explained the government's views on issues including the introduction of controls on trafficking and brokering of arms transfers; transfers of technology by intangible means; and parliamentary scrutiny (*ibidem*).

The 1998 White Paper was followed by the government's publication of a *Draft Export Control and Non-Proliferation Bill* for comment by parliament and other interested stakeholders in March 2001. The draft bill built on the previous consultations and stipulated the controls the government intended to adopt in order to modernise the national export system and make it more transparent (Government of the UK, 2001a). The resultant draft Export Control Act was presented to parliament in June 2001 and, following Labour's re-election in the 2001 UK general elections, adopted in July 2002 (House of Commons, 2003, sect. I, para. 4; Government of the UK, 2002a).

The Export Control Act of July 2002 represented a significant overhaul of the British export system by replacing prior legislation rather than amending it. While

providing the legal framework for strategic export controls, the act did not elaborate on the specific regulations that were to regulate activities such as arms brokering or intangible transfers. The specifications were provided in secondary legislation for which the government published drafts of the implementing orders in January and February 2003. The resultant implementing orders were adopted in 2003 and 2004 (Government of the UK, 2003a; 2003b; and 2004a).

#### *6.3.a.1 Parliamentary participation in debate*

Individual parliamentarians already engaged the government on arms export controls in the context of the ‘arms to Iraq’ case and called for an independent inquiry into the national arms export policy in the early 1990s. In 1992 and 1995, parliament reported on its inquiries into other cases of diversions of arms and dual-use equipment (House of Commons, 1998, sect. I, para, 22). The 1996 Scott Report served to focus parliamentary criticism of the government for its lack of transparency on arms exports and weaknesses in the national policy. Among the parliamentarians who strongly criticised the Tory government’s handling of the national export policy policies in the parliamentary debate that followed the publication of the Scott Report in February 1996 was then shadow foreign secretary Robin Cook of the main opposition Labour party (BBC News, 1996b). Parliament remained concerned with the national arms export system after the election of the Labour government in 1997.

One principal means of parliamentary participation in national debate on arms controls was the publication of reports on the legislative changes that the government proposed. In December 1998, the House of Commons Trade and Industry Committee published a report on strategic export controls as part of its inquiries into ethical trading. The report was in explicit response to the government’s actions since its

election and the 1998 White Paper. The committee welcomed the publication of national arms export criteria in 1997 but judged the criteria to have only slightly modified the pre-existing criteria. The committee also welcomed the proposals for the introduction of brokering controls and an annual reporting mechanism on arms exports. The committee further recommended that the government explore the licensing or registration of brokers as well as controls on licensed production of arms overseas in the relevant multilateral forums (House of Commons, 1998, summary, para. a-r).

The committee voiced its disagreement with the government's aim to restrict access to individual arms export licenses after a decision on the licence was reached. It was preferable, the committee argued, that parliament can test government decisions on individual licenses against the government's stated export criteria while safeguarding commercial and customer confidentiality (*ibidem*). The committee also registered its disappointment about the lack of apparent progress by the government in creating a more efficient regime on end-use controls and the absence of any international enforcement scheme. The committee noted the concerns of industry in this context that end-use controls should be the responsibility of the government and could lead to some clients placing their orders elsewhere (*ibid.*, sect. III, para. 49-55). The 1998 White Paper had merely stated that the government was currently reviewing options without further elaborating on the issue. The committee published further reports on the government proposals for the Export Control Act and its implementing orders in May 2001 and 2003 respectively (*ibid.*, 2001b and 2003). The reports on legislative changes built on and elaborated on relevant arguments the Quadripartite Committee had made in its annual reports on strategic export controls (see below).

A second principal means of parliamentary involvement in the national debate on arms controls was the regular scrutiny of the government's export policy. In April

1999, the Defence, Foreign Affairs, International Development, and Trade and Industry Committees held their first joint meeting to discuss the government's strategic export report that had been published the previous month. The committees subsequently requested additional written information from the government, met with licensing officials, and received oral evidence from the foreign secretary and non-governmental organisations. The committees published their first joint response in a report of February 2000 that considered the government's Annual Strategic Export Reports 1997 and 1998 (House of Commons, 2000a). A further report in July 2000 complemented the advocacy by the four committees which later formed the Quadripartite Committee on strategic export controls (*ibidem*, 2000b). The Quadripartite Committee expressed its satisfaction to have received clarifications from the government on the nature, volume, and intended end-user of equipment that had been licensed for export. The committee also discussed the government's export policy to individual destinations that included Indonesia, Pakistan, and Zimbabwe as well as the national policy on issues such as licensed production; regulating arms brokering; end-use controls; parliamentary scrutiny; and the presentation and contents of the government's export reports (*ibid.*, 2000a-b).

The committee regretted that the government released the data for strategic exports that were licensed during 1997 only some 15 months afterwards. The committee recommended that the government release information about the quantity of goods under each license, the value of exports licensed to each destination, and on the end-user (*ibid.*, 2000a, sect. IV). In its report in July 2000, the Quadripartite Committee argued that "[t]he nation as a whole feels an exceptional degree of engagement" in arms export decisions and that "[t]here is understandable anger when it is found that British-made weapons have been used to oppress or terrorise people" (*ibid.*, para. 80). The

committee concluded that “strategic exports by their very nature justify the establishment of a system of prior parliamentary scrutiny, and that such a system should be put in place forthwith” (*ibid.*, para. 90). The committee subsequently published regular annual reports in response to the government’s strategic export control reports. The reports were complemented with meetings with government officials as well as NGO and industry representatives (*ibid.*, 2001a and 2002).

#### *6.3.a.2 NGO participation in debate*

NGO advocacy on conventional arms export controls dates back to the early 1990s in the UK. A small number of think tanks and academics working on arms control and conflict prevention formed an advocacy network to promote more restrictive and transparent national and regional export policies in the UK. They argued that the secrecy surrounding the trade in conventional weapons and dual-use goods was fostering irresponsible arms export policies and practices since the early 1990s (see for example Saferworld, 1991; and 1992). They strongly endorsed the call by parliamentarians for the inquiry in the ‘arms to Iraq’ scandal in 1992. Network members played a prominent role in the raising of awareness about control challenges among parliamentarians and the interested public in the following years. In 1995, Saferworld published a report that aimed to serve as “a reminder to everyone that the arms to Iraq scandal may not prove to be an isolated case.” The report highlighted “the continuing ambiguities surrounding national export control policies” and argued “that there is still a very great risk of sensitive technologies being sold to potential proliferators and countries of concern” (Saferworld, 1995c, p. 1). In a 1996 report, Saferworld argued that, half a year after the publication of the Scott Report, “the initial outcry at Sir Richard Scott’s findings has subsided and the attention of parliament, the

media and the public has drifted on to other matters” (Saferworld, 1996b). It urged the government, the parliament, and the public that “the Scott Report should not be swept under the carpet” (*ibidem*).

The members of the NGO network established contacts with strategic partners in an effort to broaden the support for their aims. One partner was individual parliamentarians who were critical of the government’s arms export policies. Network members held several personal meetings with the then shadow foreign secretary Robin Cook and his staff to explain policy proposals and build confidence and mutual understandings between participants (Eavis, interview, 2004). In light of the upcoming UK general elections in 1997, non-governmental advocates encouraged Mr Cook and the Labour party to include a clear commitment to a restrictive and transparent arms export policy in the Labour election manifesto. This, advocates argued, was supported by the overwhelming majority of the electorate (Saferworld, 1998c). Another strategic partner was the broader British NGO community. Rallying points for joint advocacy were provided by the Scott report and the campaign for an EU Code of Conduct on arms exports (Eavis, interview, 2002). The idea for such a code was developed by NGOs that included Saferworld and BASIC in the early 1990s. Campaigners aimed with the code to, amongst other goals, promote restrictive and transparent export policies in the UK (see chapter five). Campaigning activities included the release of press statements, the collection of signatures among the public, and meetings with government officials and parliamentarians in late 1997 / early 1998 (Eavis, interview, 2004).

The growth and consolidation of the NGO network was reflected in the creation of the UK Working Group on Arms in the late 1990s. The working group brought together Amnesty International, BASIC, Christian Aid, International Alert, Oxfam, and

Saferworld. The participation of large membership-based organisations such as Amnesty International and Oxfam meant that the NGO network could reach a larger number of people in UK society. The participation by Oxfam GB, a development NGO, in advocacy on arms export controls was an indicator for the growth in the membership and diversity of the UK NGO network on arms control. Oxfam's participation was initially driven by a small number of dedicated in-house staff who lobbied within the organisation to include arms control, and especially small arms controls, on the organisation's agenda (Sprague, interview, 2003). The UK Working Group became the main NGO platform for sustained efforts to raise awareness and mobilise public support for greater arms export controls in the early 2000s. Its members launched public advocacy campaigns in the context of the domestic legislative reviews in the early 2000s. In 2003, its members launched the British section of the Control Arms campaign for the international Arms Trade Treaty. The campaign aimed to lobby and encourage the British government to publicly declare its support for the development of an ATT (Eavis, interview, 2004).

As was shown in relation to the role of NGOs at global and regional levels in Europe, NGOs also played a clear role in the identification and conceptual development of control standards in the UK. A key advocacy tool in this regard was the publication of detailed policy reports that contained in-depth analyses of specific control challenges and possible responses thereto. In 1997, Saferworld released a report scrutinising export licenses for small arms and Hawk fighter jets to Indonesia by the Tory government in the mid 1990s. The exports to Indonesia became the focus of public attention and criticism because of the alleged misuse of the equipment by the Indonesian military and police forces in operations against unarmed civilians. Saferworld argued that the

exports demonstrated the inadequacy of the British export licensing policy. It advocated that the “definition of ‘use in internal repression’ should ... be widened to include deployments to intimidate or threaten the civilian population” (Saferworld, 1997c). The argument was inspired by witness reports that the Indonesian army had repeatedly used UK-exported Hawk jets in East Timor for intimidating over-flights. Amnesty International - UK also pointed to the Indonesia exports to highlight a lack of effective end-use controls. The Tory government had declared that the arms exports had been conditional on an assurance by the Suharto regime that “British-supplied defence equipment will not be used against civilians in East Timor” and that it had “no reason to doubt” the Suharto regime’s compliance with the assurances (*ibidem*). NGOs argued that the reliance on the Indonesian end-use assurances was misplaced and that the British government had no effective means to ensure compliance with the end-use assurances (*ibid.* and Amnesty International, 1997, p. 2). NGOs urged the newly elected Labour government to ensure that the new national export criteria would take account of their concerns (Saferworld, 1997a).

In 1998, Oxfam GB published two policy reports on the UK’s role in small arms trade and weaknesses in the UK control system. Oxfam GB urged the government “to prevent the supply of UK small arms to places where they might contribute to armed conflict, be used to violate human rights, or undermine the prospects for sustainable development” (Oxfam GB, 1998a, p. 3). Oxfam GB urged the government to take further action in the areas of arms brokering, licensed production, and end-use controls. Non-governmental advocates could draw on recent arms transfers that had received public attention. An example was the ‘arms to Africa’ affair that involved allegedly UN embargo-busting transfers by a UK company to Sierra Leone in February 1998. Parliamentary and public criticism largely focused on the alleged prior knowledge of



UK ministers of the deal, and both the government and the parliament launched inquiries into the affair (Legg, 1998 and House of Commons, 1999). For Oxfam and other NGOs, the affair demonstrated that brokers could arrange undesirable arms transfers with impunity because of insufficient controls (Oxfam GB, 1998b, p. 4-5).

The reports by NGOs in the mid and late 1990s provided some of the first publicly accessible policy analyses of individual control norms on conventional arms control. Further, NGO advocates acted as critical consultants in control debates. In 1997, advocates submitted several policy papers to the foreign office and held discussions with relevant civil servants to influence the inter-ministerial drafting process for the national criteria (Saferworld, 1997a). They provided responses to the 1997 Green Paper and the 1998 White Paper on export controls and submitted analyses and policy recommendations in connection to the legislative changes in the early 2000s. They also continuously participated in the annual debates in parliament on the governmental export reports and presented at parliamentary hearings in the early and mid 2000s (Saferworld, 2004; 2003; and 2000b; and UK Working Group on Arms, 2005; 2003; 2001; and 1998). In addition, Saferworld published annual ‘independent audits’ of the governmental export reports. The audits presented a detailed analysis of the governmental reports, identified exports to destinations that raised concerns about possible violations of export criteria, and recommended means to improve the transparency in the governmental reports (examples are Saferworld, 2005; and 2000a).

#### *6.3.a.3 Analysis*

The review above confirms the significance of the changes in the quality of the national debate on arms export controls in the UK. In the early 1990s, the national debate was limited to ad hoc exchanges of views between the government and parliamentarians in

the context of individual export scandals. Government officials did not consider NGO advocates as valuable and credible partners in a national policy dialogue (Eavis, interview, 2002). One decade later, there existed a national debate of a high quality with regular and in-depth discussions between the government and non-governmental actors. The different participants frequently referred to each other's arguments and positions. For example, the third annual export report by the government, published in July 2000, introduced changes that were "[i]n response to the recommendations made by the House of Commons [...] and other comments on the first two reports" (Government of the UK, 2000b, p. 1). Importantly, there existed an 'argumentative' logic in the debate that implied a continued exchange of arguments and counter-arguments in relation to desirable and feasible arms control norms (Eavis and Isbister, interview, 2005).

The developments demonstrate that the government increasingly understood arms export controls as an issue acceptable for sustained public debate. It agreed to engage in detailed discussions with non-governmental advocates and continuously provide clarifications and justifications for its decisions or policy positions. Non-governmental policy experts were invited to provide technical expertise and became valued consultants and participants in inter-governmental reflections on export controls in this context (see below). The increasingly quality in the national debate indicate changes in the governmental understanding of its interests in the field of conventional arms control. The governments in the early and mid 1990s retained a large degree of exclusivity and autonomy from non-governmental interferences in the implementation of the national export policy. They were reluctant to give up this exclusivity. By the mid 2000s, the government had accepted clear constraints on its autonomy and exclusivity. It agreed to the argument to have a moral obligation to implement a

responsible and transparent arms export policy. This change is not expected from a traditionalist perspective.

Also not expected are the key roles of non-governmental advocates in encouraging the normative developments in the UK governance system on conventional arms control. Non-governmental policy experts used individual export scandals that attracted temporary public attention to mobilise more sustained scrutiny of the government's policies since the early 1990s. Non-governmental advocacy was facilitated by the launch of public consultations on the export legislation in the mid 1990s. Using recent export examples, non-governmental advocates provided detailed accounts of weaknesses in the control system that contributed to the use of British exported arms in violations of UN embargoes and violations of humanitarian law and human rights abroad. They bolstered their moral leverage by arguing that large parts of the electorate expected the government to ensure that British arms were not misused or undermined peace and security abroad. Their argumentation responded to interests in the Labour party both before and after its 1997 election to present itself as a moral actor who would put an end to the irresponsible attitudes and actions of past governments.

Indeed, non-governmental policy actors were critically involved in encouraging the Labour party to develop an ambitious policy agenda on conventional arms control and its eight policy pledges prior to its 1997 election (Eavis, interview, 2004; and Representative of the UK Ministry of Defence, interview, 2005). As shown, the pledges included Labour's commitment to strengthen national export criteria and transparency as well as the promotion of an EU code on arms exports. Labour's election resulted in a change in the UK government's position on multilateral arms export controls. As shown in chapter five, this opened the way for significant developments on export criteria and transparency at the EU level. Likewise, changes in the UK's position on

national controls on arms brokering in the late 1990s and early 2000s as well as its public declaration of support for an arms trade treaty in 2004 were influenced by domestic pressures (see below). This greatly improved the scope of further normative developments at multilateral levels (see chapters three and five). Non-governmental advocacy can therefore directly influence the interplay between national and multilateral norm processes identified previously in this research.

In short, the high quality of the national debate in the UK is mirrored by an increased significance in the role of non-governmental advocacy actors in this debate. The close participation of non-governmental advocates in control debates as well as their leadership in encouraging strengthened controls are not necessarily expected by traditionalists. The analysis provides further evidence therefore that the governance of British export controls does not easily correspond to a traditionalist perspective.

### **6.3.b Normative developments and non-governmental policy impact**

British non-governmental advocates of strengthened arms controls formulated the basic policy aims to promote greater transparency and debate on the national export policy in the early and mid 1990s. An end to the secrecy that surrounded the arms trade and the public scrutiny of the government's arms export decisions were seen as essential to establishing a responsible and restrictive arms export policy. Advocates saw their aims of greater transparency and debate largely realised over the following decade. They were assisted in their efforts by the 1996 Scott Report, the 1997 and 2002 elections of the Labour government, and continued public attention on the arms trade. They could also benefit from the sustained and focused parliamentary attention on arms export controls that emerged in the late 1990s and the public consultations on amending the national legislation on strategic export controls. Policies that NGOs advocated since the

late 1990s related to issues that included export criteria; brokering controls; licensed production; end-use controls; prior parliamentary scrutiny; and annual government reporting on exports of strategic goods.

The following sub-sections identify the normative changes in these areas since the early 1990s and compare them against the policy aims advocated by non-governmental actors. This allows for determining whether the high quality in the national control debate and the significance of non-governmental actors in this debate facilitated their influence on governmental policy choices.

#### *6.3.b.1 Export criteria*

One of the first steps of the 1997 Labour government towards establishing an ‘ethical’ element in the UK’s arms control system was the initiation of an inter-ministerial drafting process for responsible and transparent national export criteria for defence equipment. The resultant *Criteria used in considering conventional Arms Export License Applications* were presented to parliament in July 1997. In the statement preceding the criteria, the foreign secretary underlined that “arms transfers must be managed responsibly, in particular so as to avoid their use for internal repression and international aggression” (Government of the UK, 1999a, p. 4). At the multilateral level, the foreign secretary approached France about its possible support for a European code of conduct on arms transfers. This led to the tabling of an Anglo-French proposal of a code at the level of the EU in late 1997. The proposal became the basis for intensive discussions at the EU level in early 1998 and the adopted EU Code of Conduct in June 1998 (see chapter five). In October 2000 the UK government announced the adoption of the *Consolidated EU and National Arms Exports Licensing Criteria* to ensure the consistency between the national and EU criteria (Government of

the UK, 2002b, p. 3). The legally binding criteria that are established in the 2002 Export Control Act complemented the politically binding consolidated EU and national criteria.

The government's publication of the 1997 export criteria was "the first occasion on which there had been a clear and comprehensive public statement [by the UK government] of arms export licensing policy" (British Foreign and Commonwealth Office, 1998). The adoption of the successive instruments containing export criteria also led to an increase in the detail and binding character of subsidiary norms on export criteria. The 1997 criteria provided greater guidance on the equipment that might be misused in internal repression as well as on the criteria on international aggression and regional stability. The EU Code and the subsequent consolidated criteria introduced the norm that the government would "not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination." Further, human rights and fundamental freedoms were specified to be understood as those "set out in relevant internal human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights." In addition, the EU Code and the consolidated criteria detailed that countries giving rise to human rights concerns were those "where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU" (Council of the EU, 1998, criterion 2-3; and Government of the UK, 2000a).

The criteria that were adopted in the Export Control Act of 2002 were more limited in their scope and detail than the politically binding consolidated criteria. But the Export Control Act specified the conditions under which the government can impose transfer restrictions in the UK export legislation for the first time. Further, the

government cannot change the criteria without prior parliamentary agreement to amend the legislation. The act establishes thereby legally binding criteria in the UK legislation. The UK government also actively promoted common minimum standards on arms exports at the global level. In September 2004, then UK Foreign Secretary Jack Straw announced that the UK would “start work soon with international partners [...] to build support for an international arms trade treaty to further extend the international rule of law” (BBC News, 2004). The statement was made at a Labour party conference that prepared focused on the upcoming general election. Straw reaffirmed the commitment after the renewed re-election of Labour in May 2005 (Control Arms, 2005). The development of such a treaty would further complement the national and multilateral export criteria the UK government is committed to.

The criteria used by the British government by the mid 2000s fell short of what NGOs recommended in several respects. Non-governmental advocates welcomed the publication of the 1997 national export criteria that they had encouraged and to the drafting of which they contributed in submissions to the government. But they criticised the government for having missed a “major opportunity to establish clear, restrictive [export] criteria” in 1997 by retaining wordings in the criteria that left “too much scope for discretion” (Saferworld, 1997a, p. 1). Advocates also regretted that the proposal to extend the definition of internal repression to include ‘deployments designed to intimidate or threaten civilians’ was not accepted and that the impact of arms exports on regional instability only had to be ‘taken into account’ (*ibidem*). Further, the 1997 criteria and those that followed did not establish a recommended ban on transfers to end-users who would use the equipment in serious violations of international

humanitarian law (Oxfam GB, 1998c, p. 1). This demonstrates that there existed clear limits to the success of non-governmental advocacy on export criteria in the UK.

Nevertheless, the 1997 criteria as well as consolidated criteria of 2000 reflected the strategic priority of non-governmental policy experts to establish greater transparency on the national export policy. Importantly, the criteria established a baseline for the public scrutiny of the government's implementation of the stated export policy. The criteria also responded to calls by non-governmental actors for greater clarity and detail in the criteria. Some of the adopted formulations directly reflected NGO recommendations. An example in the 1997 criteria was the use of the qualifier that the government will not issue exports licenses if there is a risk that the equipment 'might' be used- as opposed to is 'likely' to be used- in internal repression. The use of the qualifier 'might' was one of the recommendations by Saferworld and other NGOs to the government in the context of the debate on arms exports to Indonesia (Saferworld, 1997c). Likewise, the further development of multilateral understandings in the EU User's Guides on the EU Code of Conduct shape the British export policy. The developments reflect calls by British NGO advocates for an export policy that leaves less room for interpretation by the government.

The partial success of non-governmental advocacy on mature norms on export criteria shows that the UK government sought to retain its flexibility in export decisions to at least some degree. But the adoption of the criteria clearly reflects the government's acceptance of an obligation to implement a responsible and transparent export policy and to agree to constraints required to limit the risk of British arms being misused abroad. The moral leverage and pressure by non-governmental advocates were effective therefore in promoting the adoption of national and multilateral norms that are of greater constraining character than expected by traditionalists (see also chapter five).



### 6.3.b.2 Transparency

The 1997 Labour government followed up on its election pledge to provide greater transparency on arms exports by publishing the first *Annual Report on Strategic Export Controls* in March 1999. The report explained the national arms export policy and provided statistical information on arms exports from May to December 1997. The government published its second annual report on strategic export controls in October 1999. The two reports and those that followed listed the number of standard individual and open individual export licenses and their combined financial value for each destination country. The reports also provided information on the categories of equipment that was licensed for export to each destination country and on license application refusals (Government of the UK, 1999a-b). The third annual report, published in July 2000, introduced changes that included a separation of the total financial values between individual export licenses for each destination country. The report, the government argued, “reinforce[d] the UK’s position as one of the most open and transparent of all arms exporting countries and provides a standard for others to meet” (Government of the UK, 2000b).

The fourth annual report introduced details on the quantity of small arms that were exported or destroyed as surplus by the government (Government of the UK, 2001b, p. 1). The government began to release statistical information on arms export licenses on a quarterly basis in November 2004 (Government of the UK, 2004b). The quarterly reports complement the annual reports which continue to give an overview of the national export policy and developments therein. In parallel, the government provided the House of Commons with additional and sometimes confidential information in response to requests for information by parliamentarians in relation to individual arms

exports. The foreign secretary also gave oral evidence to the House of Commons in response to parliamentary questions on various occasions since the late 1990s (Government of the UK, 2004c, p. 10; 2005, p. 7; and House of Commons, 2004, sect 1, para. 7-9).

The annual reports represented an important departure from the pre-1997 UK policy on parliamentary and public transparency. The government rejected proposals to grant parliament either prior or post-decision access to individual arms export licenses in the 1998 White Paper. This, the government argued, would slow down the decision-making process, harm commercial confidentiality and UK competitiveness, or the interests of overseas customers who preferred acquiring military equipment from non-disclosed sources (Government of the UK, 1998, p. 9). Nevertheless, the annual export reports established norms on transparency that greatly matured in the following years with the increasing level of detail that was provided on arms exports. The quarterly reporting further added to the maturity of norms on transparency on arms exports in the UK.

Greater transparency was a key demand of non-governmental advocates since the early 1990s. Advocates argued that, to be effective, scrutiny should provide for a regular and sustained public debate of governmental policy and practice. In turn, this would be an important step to end the “secrecy and lack of accountability [in arms export decisions that] leads to the subjugation of human rights and international security concerns to those of short-term economic gain” (Saferworld, 1996c). Parliamentarians and NGOs also repeatedly urged the establishment of prior confidential scrutiny of sensitive arms exports by a committee of parliamentarians as existed in, for example, Sweden. This, advocates argued, would be a critical element in a truly responsible and open export control system (House of Commons, 2000b).

To recall, Labour's policy pledges in 1997 committed it to provide greater transparency than the Tory government. If elected, Labour would publish annual arms export reports (Government of the UK, 1999a, p. 2). In the 1998 White Paper, the government reaffirmed its commitment to report annually on strategic export controls and their implementation to provide greater transparency and encourage a parliamentary debate). As mentioned though, the government rejected proposals to grant parliament either prior or post-decision access to individual arms export licenses in the 1998 White Paper (*ibidem*, 1998).

Non-governmental advocates greeted the government's publication of the first two annual strategic export reports as an important step towards greater transparency in 1999. But they argued that further steps were required to allow for a more detailed scrutiny of the government's implementation of the national export policy. NGOs recommended that the government provide more detailed information on the value of different licenses to each destination country and the quantities of exported equipment under the licenses. NGOs also urged the government to provide greater detail on the end-user and end-use of exported equipment and to provide more timely data on export decisions.<sup>25</sup> The incremental changes in the reports reflected what non-governmental advocates called for. The introduction of quarterly reporting also reflected demands by parliamentarians and NGOs and allowed them to scrutinise and engage the government on exports to specific destinations much closer in time to the actual decisions on export licenses. That is, data on license decisions was given between three to six months afterwards as opposed to between six to 18 months afterwards as was the case for annual reports.

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<sup>25</sup> See the NGO submissions to House of Commons, 1999b, appendix.

Further, a shift occurred in the government's approach to the initially opposed disclosure of post-decisions access to individual arms export licenses. Government officials provided sometimes confidential information on specific licenses to the parliamentary Quadripartite Committee when questioned by the committee (House of Commons, 2004, sect 1, para. 7-9). The government also made limited changes to its reporting on the end-use of UK exported equipment. Promoted by the parliament and NGOs as a key to transparency and scrutiny, the government did not provide any end-use information initially. This caused occasional misunderstandings in the scrutiny of reported export decisions. For example, exports to international peace-keeping forces that were stationed in embargoed destinations were not clarified to be destined for this category of end-user. It appeared, therefore, that the government was licensing exports to embargoed destinations in violation of national and multilateral export criteria. The government responded by clarifying such decisions in parliamentary hearings and by including explanatory information in its annual reports for exports that could appear inconsistent with the export criteria (*ibidem*, 2005, sect. 3, para. 31-33).

At the same time, there were limits to the government's willingness to provide greater transparency. The government continued to oppose the publication of information on specific licenses in its annual reports. It justified the restrictions on access to information by citing the need to protect commercial confidentiality or the potential harm to ongoing government-internal discussions on the issue (*ibid.*, 2004, sect. 1, para. 7-9). Further, the government did not introduce the systematic reporting on categories of end-users of exported equipment or actual, as opposed to licensed, arms exports. The collection and publication of relevant data, the government argued, would raise confidentiality concerns and not be cost-effective (*ibid.*, 2005, sect. 3, para. 35-37 and 44-46). The government also consistently opposed the introduction of prior

parliamentary access to the decision-making on arms export licenses. It justified its position by citing the arguments already made in the 1998 White Paper and because it would raise “unacceptable constitutional, legal and practical difficulties” (*ibid.*, sect. 2, para. 21-23).

The failure of non-governmental advocates to convince the government of a need for complete transparency is expected by traditionalists. To illustrate, prior parliamentary scrutiny of export license applications to sensitive destinations provides a very high level of transparency. But it also implies the greatest constraint on governmental autonomy and exclusivity in export decisions. Notwithstanding, advocates were largely successful in promoting greater transparency and the adoption of issues considered as strategic priorities. The government adopted a legal requirement for public annual reporting in the Export Control Act and provided quarterly reports of a high level of detail. The reporting provided the basis for a well established and continued dialogue between stakeholders on arms export controls.

The developments demonstrate that non-governmental actors had a high level of influence in the area of transparency norms. They highlight the evolutionary character in the changes of the government’s understanding of its interests in the area of transparency. The UK government was initially still greatly concerned about the security and economic implications of greater transparency. It incrementally overcame its concerns in these respects which points to a learning process within the government. The increasing transparency also responded to the government’s increased interest to be publicly seen as fully committed to its stated policy aim of a responsible and transparent export policy.

### 6.3.b.3 Brokering controls

The Export Control Act and its secondary legislation introduced brokering controls into the UK system on arms export controls. Previous legislation banned UK persons from the trafficking or brokering of military equipment from the UK and from overseas countries to destinations under a mandatory UN arms embargo. In 1998, the government proposed to extend controls to destinations that were under a non-binding UN arms embargo or a national, EU, or OSCE arms embargo. The government also proposed to introduce controls on the brokering of restricted goods, that is, missiles with a range of 300 km or more and of strategic goods which were “the subject of widespread national and international condemnation” such as torture equipment (Government of the UK, 1998, p. 15). The brokering controls in relation to embargo violations and to restricted goods were to apply to persons within the UK as well as to UK persons operating from abroad. The government did not propose to control the brokering in the UK or abroad of strategic goods other than restricted goods. The government argued that the limited controls would be justified because those involved in the trafficking or brokering of goods between overseas countries would already be subject to export controls by another country. A second reason was concern that the enforcement of controls on the trafficking or brokering of transfers between overseas countries would divert resources from more critical areas (*ibidem*).

The policy changed with the EU agreement on guidelines on arms brokering controls that were adopted in 2001 (see chapter five). The guidelines had been negotiated with UK participation and applied to all equipment on the EU List of Common Military Goods. The Labour government pledged to introduce the relevant controls in its 2001 election manifesto. It went further by pledging the introduction of controls on arms brokers and traffickers “wherever they are located” (Labour Party,

2001, p. 39). The government proposed, therefore, to also introduce extra-territorial controls on brokering to non-embargoed destinations and in goods other than restricted goods. The secondary legislation that was proposed and adopted in 2003-04 fell short of the full extra-territoriality the Labour government had pledged. Rather, the legislation restricted extraterritorial controls to trade in restricted goods and trade in strategic goods to embargoed destinations. Nevertheless, the secondary legislation introduced controls on brokering activities within the UK territory and extraterritorial controls that were more comprehensive in their scope (Government of the UK, 2003b; 2004a). It thereby established significantly more mature norms on brokering control in the UK than was the case previously.

Non-governmental advocates called for the regulation of arms brokering and trafficking since the mid 1990s. They could draw on an increasing number of investigations and reports that highlighted the undesirable roles of uncontrolled middlemen in arms transfers. Examples were the investigations into transfers to Rwanda and to Sierra Leone that received public attention in the UK in 1996-97 and 1998-99 respectively (see above). The Tory government announced that it was considering further steps on arms trafficking in the 1996 Green Paper. The Labour government proposed to extend controls to the specific areas of brokering in violation of arms embargoes and in restricted goods in the 1998 White Paper. It fell short though, as mentioned, to propose highly comprehensive controls. NGOs rejected the government's arguments in the 1998 White Paper that controls on brokering arms should be more limited than those on exports from the UK. Saferworld argued that limited controls would be insufficient because brokers and shipping agents often source arms from countries with poor controls. It also pointed to experiences of other countries that controlled brokers

without imposing an unjustifiable burden on enforcement agencies (Saferworld, 2000b).

Advocates welcomed the government's policy change with the 2001 EU guidelines on arms brokering controls and its 2001 election manifesto pledge to control UK brokers 'wherever they are located' (see above). This was understood to cover UK brokers who operated from abroad and arranged deals to non-embargoed destinations. Advocates urged the government to ensure that new controls would cover UK passport-holders who operated wholly from abroad. The reason, advocates argued, was that British citizens could otherwise "evade controls by simply stepping out of the country to conduct their arms brokering deals". NGO advocates also urged the introduction of controls on shipping agents to ensure "effective control over the activities of UK nationals in the supply of arms to regions of conflict and tension" (UK Working Group on Arms, 2001).

Non-governmental advocates welcomed proposals under the draft Export Control Bill to adopt brokering controls that would cover brokering activities in the UK and prohibit brokering and trafficking by UK persons to embargoed destinations from anywhere. But they were strongly critical however of the government's backtracking on its election promise to introduce controls on arms brokering wherever they operated. As a reason, the government cited that British nationals who were overseas would not know about their requirement to apply for UK brokering licenses, potential conflicts of jurisdiction with overseas states, and enforcement and administrative challenges (House of Commons, 2003, sect. 4). NGOs consistently reaffirmed the calls for comprehensive



brokering controls over the coming years and provided detailed arguments why the government's position against certain controls was, in their view, unjustified.<sup>26</sup>

The brokering controls that the government eventually adopted under the Export Control Act and its secondary legislation partially reflected what advocates had called for. The legislative amendment established legally binding norms on brokering controls that were more comprehensive and detailed in their scope than was previously the case. The UK government accepted the argument therefore that it had a moral obligation to prevent its territory being used for the arrangement of undesirable transfers abroad or its nationals to broker arms in violation of multilateral and national embargoes. Nevertheless, advocates did not succeed in convincing the government to adopt full extra-territorial controls or controls on transportation and shipping agents. This illustrates again the difficulty of advocates to convince government to adopt controls in areas that involve actors operating abroad and/or are highly cost-intensive. It also shows the continued existence of limits on the willingness of governments to accept certain constraints despite the high quality of the national debate in the UK.

#### *6.3.b.4 Controls on end-use and licensed production overseas*

Non-governmental advocates raised the need of an effective system of end-use controls since the mid 1990s. Saferworld already urged the UK government to adopt an effective system “for monitoring the end-use of arms and dual-use exports” in 1996 (Saferworld, 1996a, p. 2). Shadow foreign secretary Robin Cook responded to the calls in the 1997 *Policy Pledges for a Responsible Arms Trade*. They committed Labour, if elected, to “strengthen monitoring of the end-use of defence exports to prevent diversion to third

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<sup>26</sup> See NGO submissions to the Quadripartite Committee in House of Commons, 2003a; 2005; and 2006.

countries and to ensure that exported equipment is used only on the conditions under which the export licence has been granted” (Government of the UK, 1999a, p. 3). In 1998, Labour reaffirmed the commitment and stated that it was reviewing relevant options (*ibidem*, 1998, p. 21).

The government later declared that it accepted the benefits of monitoring the end-use of UK exported equipment “in certain circumstances where we believe that such monitoring would genuinely add value to our efforts to minimise the risk of diversion” (Government of the UK, 2000b, p. 7). At the same time, it argued that “[p]ost-export monitoring cannot in itself prevent equipment from being diverted or misused”, and that “[t]he only sure way of preventing diversion is to refuse an export licence if it is assessed that an unacceptable risk of diversion exists”. The government also stated that “[i]t would be neither practical nor useful to monitor the end-use of all strategic goods exported from the UK over their lifetime with the end-user” because it would be “extremely resource intensive”. The government would, therefore, continue to focus on strengthening the processes of risk assessment at the licensing stage to prevent diversions (*ibid.*, 2000b, p. 7).

While advocates welcomed the government’s commitment to end-use controls, they argued that the government’s proposals were insufficient. Again, advocates could draw on a number of instances in which UK exported equipment was allegedly misused in violation of end-use assurances that had been given by importing countries. Cases of alleged misuse included the use of UK exported equipment by the Indonesian armed forces in Aceh in the late 1990s (see above) and of British tanks by the Israeli armed forces in the Occupied Territories in the early 2000s (UK Working Group on Arms, 2003). NGOs argued that the government, despite its pledges, failed to introduce a more

systematic approach to end-use monitoring or produce guidelines on the circumstances when end-use monitoring should be undertaken (Saferworld, 2003 and 2004).

Similarly, non-governmental advocates urged the government to strengthen the controls on licensed production arrangements that, it was argued, were posing high risks of diversion and undermine the efficacy of UK export controls. The government did not specifically raise the issue of licensed production deals in the 1998 White Paper but considered several control options during the debate on the Export Control Bill (UK Working Group on Arms, 2001). The government later argued that certain controls were already in place. They included the requirement to apply for a license for exports of “controlled production equipment ... for any overseas production facility, and any controlled components or sub-assemblies that might be required.”

The government added that “the most desirable solution to the problem of licensed production overseas would be a multilateral one” (House of Commons, 2000b, p. 5). The eventually adopted legislation clarifies this licensing requirement but does not introduce additional controls. NGOs disagreed with the government’s argument in the debates on the secondary legislation that existing controls were sufficient and argued that the licensed production agreements should, at a minimum, contain post-export conditions such as production ceilings and end-use restrictions (UK Working Group on Arms, 2001 and 2005).

The analysis demonstrates that successive UK governments did not greatly change their position on the undesirability of a comprehensive post-export monitoring system or highly detailed and restrictive controls of foreign licensed production. Non-governmental advocates failed therefore in their advocacy and moral leverage that strict controls in these areas were a responsibility of the government demanded by large sections of the electorate. This shows again that non-governmental advocacy actors

were limited in their influence especially in areas that involve controls on actors and activities abroad. The areas of controls on end-use and licensed production abroad are thereby further examples of limits to advocacy despite the high quality in the national debate on conventional arms control in the UK.

#### *6.3.b.5 Analysis*

The comparison between the positions that non-governmental actors advocated and those that the UK government adopted since the late 1990s suggests the continuing existence of limits to non-governmental policy influence. The advocacy by non-governmental actors was underpinned by the moral leverage that the UK government had the responsibility to prevent that British arms, entities, or persons led to destabilising situations or violations of human rights abroad. This leverage was insufficient to change the government's position on especially issues considered highly intrusive and or too costly and involving controls on actors and activities abroad. Examples were the continued rejection by the government of prior parliamentary scrutiny, extraterritorial brokering controls, controls on shipping agents, comprehensive end-use monitoring, and detailed controls on licensed production deals. This behaviour corresponds to traditionalist expectations that governments will seek to retain flexibility and secrecy in the national policy on conventional arms control. It is notable because it demonstrates clear limits to the policy influence of non-governmental actors even in a state with a high quality in its national debate.

At the same time, non-governmental advocacy had an evident impact on governmental policy choices on conventional arms control in the UK since the early 1990s. The government adopted control norms on export criteria, transparency, and brokering controls that are of higher levels of maturity than necessarily expected. The

initial rejection but later evolution of mature norms in these areas demonstrates important changes in the interests of the government in relation to export controls. The government attached increasing importance to being publicly seen as a responsible actor in the global arms trade and accepted growing constraints in light of changes in the understanding of this responsibility itself. Non-governmental advocacy was, next to peer pressure and socialisation processes at multilateral levels (see above), a key driver in these changes of interests of the UK government. Advocacy actors were also successful in encouraging the UK government to pursue ambitious agendas that would allow it to present itself as an active supporter of responsible and transparent export controls. Notable examples in this context were the UK leadership on the EU Code in 1997, the ATT in 2004, and the evolution towards comparatively very high levels of transparency in national reporting on arms exports.

The influence of non-governmental advocacy actors is also reflected in the realisation of their aim to establish an argumentative logic in the national debate that would require the government to provide detailed justifications for its positions. This then offered the scope for further debate on whether the justifications were acceptable. The provision of credible and policy-relevant information was a crucial condition for the access of non-governmental actors to intra-governmental debates and the willingness of governmental officials to engage with them. The high degree of acceptance of non-governmental policy experts is illustrated by the frequent requests of officials for opinions on proposed changes in national standards. Officials habitually took into account the expected reactions by NGO advocates and requested their input to strategic discussions. Indeed, individual non-governmental experts were sometimes the only actors outside specific government departments who had the policy expertise to provide constructive feedback on proposed changes (Eavis, interview, 2004; and

Representative of the UK Ministry of Defence, interview, 2005). This technical advocacy was complemented with continued public advocacy and the shaming of the government in the context of arms export scandals.

In short, the analysis shows the continued existence of limits to the influence of non-governmental advocacy in the national debate on conventional arms control in the UK. The government's rejection of norms such as prior parliamentary scrutiny or extraterritorial brokering controls is fully consistent with traditionalist expectations. The high quality in the national debate is therefore an enabling but not a determining factor for the influence of non-governmental advocacy actors. But the analysis also shows that non-governmental advocacy actors were highly influential within the given constraints and closely involved in the normative processes towards mature control norms in the UK. There is consequently evidence for the greater significance of non-governmental actors in the governance of conventional arms control in the UK if compared to the early 1990s.

## **6.4 Conclusions**

Chapter six investigated whether normative developments confirm the increased significance of non-governmental actors in the governance of conventional arms control at national levels in European states. The chapter first turned to an assessment of the impact of non-governmental actors in promoting sustained national debates that are based on the regular exchange of detailed information between stakeholders. The chapter then turned to an assessment of the significance of non-governmental advocacy actors in the UK as a state with a high level of quality in its national debate on arms control. The analysis illustrated continued limits on the role and impact of non-governmental actors. National debates remained of a comparatively low level of quality

in a few states by the mid 2000s. Further, parliaments and/or NGOs did not take up the opportunity to engage in a detailed and regular exchange of views that was offered by the publication of governmental export reports in some states. The limits to non-governmental advocacy were also illustrated by the failure of non-governmental actors to realise certain policy aims in the UK despite their success in improving the structural conditions within which they operated. The analysis suggests therefore the continued relevance of traditionalist expectations to at least some degree.

Notwithstanding, the overall maturing of transparency norms in EU states, the higher quality of national debates, and the increased participation of non-governmental actors in these debates are puzzling from a traditionalist perspective. Governments incrementally accepted detailed reporting on their arms exports as a moral obligation in the arms trade and a requirement for being seen as a responsible EU member. The developments illustrated again the interplay between national and multilateral norms in the EU as well as the importance of inter-subjective socialisation processes between states. Non-governmental policy experts made important contributions in this context with their provision of technical expertise and moral leverage. Of particular importance in this respect were individual non-governmental policy experts in the UK who had been involved in national and multilateral developments since sometimes the early 1990s. Gaining recognition as experts at the multilateral level, their strategic advice and consultancy could sometimes be more valued by individual governments than those of domestic non-governmental actors. The reason for the value attached to the views of these ‘foreign’ experts was that domestic actors did not always have the technical knowledge and understanding of the management of controls (Eavis, interview, 2005; Greene, interview, 2008; see also below).

Non-governmental actors were also closely involved in the normative processes in the UK since the early 1990s. The government adopted increasingly mature norms on export criteria, transparency, and brokering controls and therewith accepted constraints on its flexibility and autonomy from non-governmental influences in the area of conventional arms control. Non-governmental actors strategically used arms export scandals and cases of undesirable exports to highlight remaining weaknesses in existing controls and engage the government in a sustained dialogue. Importantly, non-governmental advocates were successful in establishing an argumentative logic in the national debate and in being accepted as valued participants in national debates. The effectiveness of moral leverage by advocacy actors was reflected in the increasing willingness of the government to be publicly seen as a responsible and transparent actor in the arms trade. The changed interests of the government in relation to export controls were further reflected in the success of non-governmental advocates to encourage the government to pursue ambitious national and foreign policy agendas. As shown, this could greatly facilitate the scope for multilateral norms in the areas of export criteria and transparency.

In summary, the analysis demonstrates that there remained limits to success of non-governmental actors to establish sustained national debates of a high quality in EU states. Likewise, non-governmental actors faced limits in their advocacy in the UK. The UK government did not adopt advocated normative elements it continued to consider as too intrusive or little cost-effective. Nevertheless, non-governmental actors succeed in realising their aim of improving the structural conditions for their advocacy in many states. They also succeeded in exerting a considerable influence on governmental choices in the UK. Of interest in this context are also findings of complementary



research conducted for this project in relation to Austria and France that, as previously indicated, is not further detailed here for reasons of space.

The quality of national debates on arms export controls in Austria and France remained at lower levels than in the UK. That is, transparency norms on arms exports remained of limited maturity in Austria in the sense that the government did not publish national reports as a basis for discussions among national stakeholders. But legislative reviews in 2001 and 2004-5 led to the maturing of norms in areas that included export criteria and brokering controls. Conversely, transparency norms greatly matured in France. But there did not emerge a sustained dialogue between the various stakeholders and norms on, for example, export criteria or brokering controls did not greatly mature in the French national legislation since the 1990s. Normative developments in both Austria and France demonstrate therefore that national NGO networks had mixed results in their advocacy on strengthened arms controls at national levels.

Of further note is that relations between non-governmental and governmental actors improved in both Austria and France with the greater acceptance of the former in control debates. As was the case in the UK, non-governmental actors frequently used domestic arms export scandals as foci in a variety of public campaigns since the 1990s. In difference to the UK though, Austrian and French NGOs developed limited technical capacities to engage in detailed policy advocacy. Notable in France was also the continued antagonistic approach of non-governmental actors towards the government and strong criticism that the government authorised exports for economic and political reasons at the expense of human rights concerns. The limited technical capacities of Austrian and French NGOs as well as their antagonistic approach in France contributes to explaining why the governments of these two states often attached greater importance to criticisms and suggestions by 'foreign' policy experts.

Interviews with representatives of the ministries of foreign affairs in Austria and France confirmed the above point. The interviewed officials also highlighted that, while the views of non-governmental actors were taken into account, governmental decisions on changes were often influenced by especially developments at the EU level and in other EU states such as Germany and the UK. This then shows that, as was shown in relation to the UK, non-governmental actors operated in a complex environment in which normative processes were influenced by socialisation and learning processes.

The findings in relation to national non-governmental advocacy in the EU do not fit easily with traditionalist expectations and clearly illustrate that governmental interests in the field of conventional arms control were not static. Rather, they underline the pertinence of a constructivist approach that understands governmental interests as socially constructed and amenable to change. The findings also contradict realist approaches and neo-liberal institutionalism by demonstrating that non-governmental actors are not necessarily more constrained in the high politics of conventional arms control as opposed to advocacy on issues of low politics such as environmental protection or human rights.

## **Chapter 7: Conclusions**

Clear changes took place in the fields of conventional and small arms control in the last two decades. Until the end of the Cold War, there existed few multilateral norms and regulations on the way states controlled and implemented their national arms controls. Non-governmental advocacy actors were not considered as valued participants in debates to strengthen controls in view of limiting undesirable aspects of the arms trade such as of arms trafficking or destabilising accumulations abroad. By the late 2000s, a very different situation presents itself. States adopted numerous multilateral instruments that establish control norms on the arms trade. Many instruments focus on the combat of illicit small arms trafficking. Other instruments in especially the European Union focus on restraint and transparency in conventional arms transfers. The norms are notable for imposing constraints on the flexibility of states in their national standards and arms control practices. In relation to transparency, they reduce the exclusivity of governments in their implementation of national control policies. Further, non-governmental advocacy actors and advocacy networks emerged as active participants in normative developments and continuously sought to influence governmental policy choices. They cooperated with interested governments in coalitions of the willing and contributed to multilateral and national processes with a wealth of research and policy reports. They often also established regular debates with governments on the national arms export policy at multilateral and national levels in at least the EU.

This research set out to investigate whether the changes present a significant challenge to the traditional understanding of the dynamics and structures that govern state behaviour in relation to conventional and small arms control. Is there evidence for a greater willingness of states to cooperate with each other as well as with non-governmental actors in the security sphere? This would confirm an important shift

towards a governance that increasingly involves norms and non-governmental actors. In relation to norms, the research asked whether the adopted norms reflect significant changes in the perceptions of states of their national security interests. Specifically, do they confirm that states are increasingly willing to accept constraints in militarily sensitive areas to better promote the moral aims of peace and stability abroad? In answer, the research assessed the degree to that the norms and their internal characteristics relate to and constrain the national flexibility and autonomy of states in their arms controls. It further looked at the reasons and dynamics underpinning normative developments in the various multilateral settings. In relation to non-governmental advocacy actors, the research asked whether their role and impact confirms their increased significance in the relevant developments. The research responded by investigating the participation and possible leadership roles of non-governmental actors in normative processes as well as their success in realising their policy aims. This was complemented with the identification of the conditions that facilitated the influence of non-governmental advocacy actors.

In terms of international relations theory, the research takes place within a well established debate between, in simplified terms, traditionalists and their critics. Traditionalists take the condition of international anarchy and the therein implied ever-present danger of military confrontation as a starting point for theorising. Certain assumptions are drawn from this approach. They include that states are primarily concerned with their national security and will oppose restrictions on their national practices if these restrictions raise military sensitivities. States are also expected to fend off non-governmental interferences in their implementation of national controls on conventional and small arms. Theories that, despite important differences between them, share this traditional understanding of governance in arms control are classical

and neo-realism as well as neo-liberal institutionalism. It should be noted that neo-liberal institutionalism is generally open to notions of cooperation between states and non-governmental influences but restricts its analysis to areas of 'low' politics such as economic relations. Critics of the traditional approach include social constructivists who argue that norms and normative changes can significantly shape state behaviour. Constructivists also provide a substantial literature on the role and influence of non-governmental advocacy actors in enabling and driving normative processes in areas including environmental protection or human rights. Some constructivists explicitly address norms and non-governmental actors in the area of arms control and argue that there is no particular handicap to their influence in this area of 'high' politics.

This research addressed the debate on the adequacy of traditional understandings of the governance of arms control by providing a detailed study on the significance of norms and non-governmental actors in conventional and small arms control. It also sought to elucidate the interplay between normative processes and identify the reasons for the divergence in the internal characteristics of norms adopted in different multilateral settings. Indeed, these aspects of norm diffusion remain poorly understood in international relations theory. That is, constructivists provide useful models for the analysis of normative developments such as the prominent model of the norm 'life cycle'. But the existing models do not, and are not designed to, allow for the comparative analysis of internal characteristics in multilateral norms on the same issue. They also do not allow for the detailed analysis of the possible evolutionary nature of and changes in the internal characteristics of norms within a given multilateral or national setting. To overcome these limits, the research developed the complementary model of the 'internal life' of norms. The model traces the evolution of a norm from its basic form as a vague and poorly binding principle towards greater levels of

comprehensiveness, detail, and binding character and therewith a greater level of maturity. The model facilitated the provision of nuanced assessments of the degrees to that norms interfere with traditional security interests and non-governmental actors were successful in their advocacy and in influencing the security interests of states.

## **7.1 Research findings**

The research consistently revealed limits to normative developments. States did not consider the adoption of multilateral norms that address the misuse of small arms by state actors. As of late 2009, there was no agreement to negotiate an instrument on small arms brokering at the global level. The opposition of individual states prevented the adoption of global norms on small arms ammunition in the negotiations of the International Tracing Instrument. States in Asia and the Middle East did not consider the challenges of illicit small arms trafficking and proliferation as important enough to justify the development of comprehensive instruments in their region or sub-region. In addition, the multilateral norms that states did adopt are often restricted in their comprehensiveness, detail, and binding character. Consensus-bound negotiations allowed individual states to block the adoption of normative elements they considered as undue interferences in their national sovereignty and too constraining. Examples were the rejection of detailed norms on transfer criteria, brokering controls, or the identification of surplus small arms in the UN Programme as well as of the legally binding character of the UN Programme and the Tracing Instrument. Likewise, there existed limits to the maturity of norms that were adopted in the EU and the UK. National debates remained at low levels of quality in some EU states and no norms on issues including the extraterritorial control of brokers and licensed production deals

abroad were adopted in the EU and the UK. The UK government also repeatedly rejected the introduction of prior parliamentary scrutiny of arms export licenses.

In parallel, the research consistently showed limits to the significance of non-governmental actors in normative processes. Public advocacy cannot be said to have provided an overall leadership role in the UN processes on small arms in the way that such advocates mobilised global support for the adoption of the international ban on anti-personnel landmines in 1997. The limits in normative developments also illustrate the failure of especially public advocacy actors to realise certain policy aims. For example, the global advocacy network IANSA failed in its efforts to broaden the UN agenda and encourage multilateral action on small arms misuse or small arms ammunition. IANSA also did not see its aims realised in relation to the adoption of mature global norms on small arms tracing, transfers, and brokering. The limits to the policy influence of non-governmental actors demonstrate that their moral leverage was insufficient in these respects. Specifically, they failed to convince reluctant states that the advocated norms and normative elements were a moral imperative in light of the humanitarian consequences associated with illicit small arms. Examples of limits to the influence of non-governmental advocacy in the EU and the UK included the mentioned limits in normative developments in relation to the quality of national debates as well as to comprehensive brokering controls and controls on foreign licensed production deals. The limits to the advocacy success of non-governmental actors in UK also demonstrated the existence of limits even in a state with a high level of quality in its national debate on conventional arms control.

The limits to normative developments and the significance of non-governmental actors therein correspond to a traditionalist perspective. Individual states blocked normative developments especially in relation to mature norms and issues directly

affecting what is traditionally understood as national security interests. States including China, Egypt, and Pakistan offer good illustrations. They sought to retain flexibility and secrecy in their national practices and rejected the adoption of global norms and normative elements they considered as undue constraints and as conflicting with their military interests. Their continued rejection of certain positions demonstrates the failure of non-governmental advocacy to change their perceptions of security interests. The governments remained resilient to and were not convinced by the argument that the advocated norms and the therein implied constraints were justified. They did not accept that the advocated positions were a moral obligation in light of the humanitarian consequences associated with illicit small arms. Rather, they continued to value what they understood as required to ensure their military capacities to defend against armed aggression over the moral aims of reducing instability and violations of UN embargoes and humanitarian law abroad. They also did not consider criticism by states with more ambitious agendas and non-governmental actors as sufficient to overcome their concerns about military implications of the advocated norms. They did not consider being seen as active supporters of international stability and security as important enough to change their security interest.

The behaviour of these states reflects traditionalist expectations about the primacy of military interests to retain flexibility and secrecy in relation to conventional arms and small arms. In an area of high politics, states rejected what advocates argued *ought to be done* to promote stability and security abroad in favour of the 'egoistic desire for [national] security'. The adoption of norms of little specificity and weak binding character in some instances may be taken as an example of the desire of statesmen to only pay lip-service to moral aims while avoiding concrete action. The limits in non-governmental advocacy success in shaping agendas illustrate that states continue to set



the framework within which non-governmental actors operate to at least some extent. The limits in influencing policy outcomes illustrate Waltz's point that, in cases of differences of views between governments and non-governmental actors, it is governments that determine policy outcomes.

Notwithstanding the above, a traditionalist approach cannot fully account for the normative developments and their policy outcomes. First, most of the relevant multilateral instruments address small arms not only in the context of armed crime but also in relation to armed conflict. They cover therefore state-owned small arms and, at regional and sub-regional levels, often extend to controls on small arms ammunition. The UN Programme and other instruments are also notable for covering transfer criteria and stockpile controls. Instruments in the EU cover norms on export criteria and transparency not only on state-owned small arms but all categories of conventional arms. Many of the instruments contain norms on issues therefore that directly affect traditional security interests. The presence of norms on these issues contradicts traditionalist expectations that states are unlikely to adopt norms in areas that constrain national flexibility and autonomy in conventional and small arms. Second, multilateral norms were often of at least medium levels of specificity and binding character, and there were several examples of states adopting norms of a comparatively high level of maturity. They included mature norms on stockpile controls in the UN Programme, the OSCE Document, and sub-Saharan African instruments as well as on transparency and brokering controls in the EU. The adoption of mature norms contradicts traditionalists expectations that states will generally seek to fend off specific and binding interferences in their national practices.

A traditionalist approach and existing models of norm development are also ill-equipped to explain the evolution in internal norm characteristics. The research highlighted several multilateral forums in that the adoption of initially basic norms of limited specificity and binding character was followed with the adoption of more mature norms. Examples included the maturing of global norms on tracing small arms as well as various sub-regional norms on small arms in sub-Saharan Africa. Similarly, multilateral and national norms on export criteria, transparency, and controls on the brokering of conventional arms gained greatly in their maturity after the initial adoption of more limited norms in the European Union and the UK. Traditionalists cannot adequately account why states eventually accepted increasing constraints in their arms controls that they initially rejected. The maturing of norms in their specificity and binding character also demonstrates that norms were not static and emerged and cascaded at the various multilateral and national levels without changes in their internal characteristics. In addition, the normative developments demonstrated the sometimes close interplay between the processes at different levels. As shown, regional and sub-regional agreements facilitated the subsequent adoption of global norms. National developments in the EU sparked multilateral developments which then further facilitated the later maturing of norms at national and sub-regional levels. Norm emergence was therefore often not a straight-forward and unitary process but consisted of overlapping and mutually influencing developments at various levels.

It was also demonstrated that changes in conventional and small arms control cannot be adequately explained without acknowledging the role and influence of non-governmental actors. The detailed non-governmental research of control challenges and possible solutions greatly contributed to issue identification and awareness-raising. In particular, it made critical contributions to the conceptual development of possible

norms by identifying basic control principles and the more specific elements required to effectively address the challenge in question. The case of brokering controls offered a good example. Non-governmental research in the late 1990s provided credible evidence that brokers were closely involved in illicit arms transfers. Importantly, it clarified the legal loopholes that allowed brokers to act with impunity by arranging illicit transfers that do not originate from or pass through the state in that the broker is located. Continuing research on legal systems and control structures further clarified individual normative elements such as extraterritorial controls and their possible scope. The research by non-governmental actors informed the Dutch-Norwegian initiative on brokering controls as well as the negotiations of brokering norms in the EU, the OSCE, and the UN. The inclusion in multilateral debates of the brokering issues and its specific normative elements also illustrate the influence of non-governmental actors on agenda setting.

Of particular relevance to normative developments was the technical advocacy by members of epistemic communities on conventional and small arms control. Enjoying insider access to policy debates, they advised interested governments on strategic approaches and priorities in light of overall normative goals. Their influence in this respect was illustrated by normative developments in relation to tracing illicit small arms. They argued that the sensitive issue of cooperation in tracing illicit small arms in the context of armed conflict would best be addressed by first focussing on establishing consensus on marking standards. This advice underpinned the subsequent French-Swiss initiative that non-governmental policy experts had encouraged as a feasible way to achieve greater accountability in the small arms trade. Further, advocacy actors facilitated coalitions of the willing by identifying common interests among states. An example was provided in relation to global norms on small arms stockpile controls.

Non-governmental experts encouraged developing states that were interested in modernising their national control infrastructure to voice their views in global negotiations. They also successfully argued that small arms could be diverted even in developed states and that these states should support global norms on stockpile controls to allow for donor assistance. This focus on technical assistance was used to overcome the initial opposition of states such as Egypt that feared that the advocated norms would constrain them in their national practices.

The role of technical experts as critical consultants was complemented with the awareness-raising and mobilisation efforts by public advocacy actors. Broad, transnational campaigns and large, membership based organisations and networks added moral leverage to calls for strengthened controls. As argued, they played key roles in encouraging the negotiations of the EU Code of Conduct and the global process on an Arms Trade Treaty. A principal element in this context was their moral argumentation that the acceptance of constraints on national flexibility and transparency were an imperative in light of negative consequences associated with poor or lacking controls. The effectiveness of technical and public advocacy was also shown in relation to governmental policy choices in the UK. Further, there exists a considerable overlap between policy outcomes in the investigated processes and the priorities and policy aims of at least technical advocacy actors. Examples included the consolidation of global norms on small arms in the context of armed conflict as well as of multilateral norms on export criteria and transparency in the EU. Advocacy actors also realised their strategic aims of institutionalising control issues on many multilateral agendas through the adoption of instruments that provided a framework for continued advocacy and norm development. Another example was the success of non-governmental actors in

improving their possibilities to engage with governments and scrutinise their implementation of arms export policies in the EU and the UK.

In summary, the research identified continuing limits to the significance of normative changes and non-governmental advocacy in the areas of conventional and small arms control. This shows limits to the willingness of states to cooperate with each other and with non-governmental actors in the areas of conventional and small arms control. This then shows that there remain limits to the changes in the governance of conventional and small arms control in the last two decades. The traditionalist approach to security studies continues therefore to reflect dynamics and structures in conventional and small arms control to at least some extent. Nevertheless, there exists sufficient evidence for the claim that the changes were significant. Traditionalist expectations are often not met or even contradicted in relation to the control issues on that states adopted norms as well as the specificity and maturity of the norms. The same was demonstrated in relation to the close cooperation between interested governments and non-governmental policy experts and the integral contributions of non-governmental advocates to normative processes. Likewise, technical advocacy actors had an unexpectedly high level of influence on policy outcomes if their strategic priorities are considered against the norms adopted by states. This demonstrates that, despite limits to developments, there took place changes towards a governance of conventional and small arms control that includes a greater involvement of norms and non-governmental actors.

The findings challenge traditionalist views about the dynamics and structures underpinning international relations in areas of high politics. Rather, they confirm the pertinence of social constructivism to the understanding of the investigated changes. The adoption by states of control norms involving constraints on traditional security

interests illustrates the socialisation of states to the argument that the negative consequences of poor controls imposed a moral imperative to act. Indeed, the acceptance of strengthened controls became seen as a requirement for states to demonstrate that they were responsible actors who opposed arms diversions and the destabilising and humanitarian consequences of illicit transfers. As shown, the extent to that socialisation processes impacted on traditional security interests differed in relation to different multilateral and national levels. That is, France initially opposed multilateral norms in the EU to protect its national flexibility and secrecy in a similar way to that China and other states pursued these traditional interests in relation to small arms norms at the global level. But France and other EU states were considerably more open to eventually accepting mature norms at the sub-regional level than China that remains unsupportive of for example global norms on transfer criteria and transparency. The developments in the EU also highlighted the importance of peer pressure and learning from the experiences of other states as further inter-subjective processes at inter-governmental levels.

Non-governmental actors were closely involved in these processes. They contributed to learning processes by states with their education of governments on control possibilities and their implications as well as the experiences of governments already operating the advocated controls. Critically, they were key drivers of the moral argument that acceptable and responsible behaviour in the arms trade required the acceptance of certain constraints in national practices. There also existed a clear interplay between governmental and non-governmental actor interests. Responding to encouragements by non-governmental advocates allowed interested governments to present themselves as active international supporters of morally just causes. An example was the public support for an Arms Trade Treaty that allowed states to present

themselves as supportive of a goal advocated by non-governmental organisations from across the globe. Of note in this context is the incremental nature of changes that sometimes took place in a period of several years and longer. The developments in the UK illustrated the importance of an argumentative logic between different participants in a national debate in this respect.

The research further confirmed the relevance of non-governmental actors in the areas of issue identification, awareness-raising, agenda setting, and advocacy on conventional and small arms control. They played similar roles and influenced governmental choices in ways similar to that identified by constructivists and neo-liberal institutionalists in relation to non-governmental actors working in areas of low politics. The research supports the claim therefore that, to adapt Price, “there is no particular handicap for NGOs working on security issues compared to other issues such as the environment or human rights” (Price, 1998, p. 622). The normative developments also reflect dynamics and processes that neo-liberal institutionalists identified principally in area of only low politics. The evolutionary character of multilateral norms provides examples of states deepening their cooperation after overcoming the initial transaction costs that were required to establish multilateral frameworks on conventional and small arms control. The repeated interactions of states within these frameworks contributed to building further trust among states and facilitated a functionalist ‘spill-over’ and the maturing of norms.

## **7.2 Contributions to academic debates**

The research was based on the selective study of relevant norms and processes and restricted its detailed sub-regional and national foci to the EU and the UK. It also excluded the role of actors such as the arms industry and pro-gun NGOs from its

analysis. In other words, the research did not seek to comprehensively address the investigated questions. Further, processes in sub-regions and states other than the EU and the UK may differ from those analysed in this research project. There are limits therefore to the detail of the findings as well as to the degree to that the findings of this research can be generalised and applied to other areas of study in international relations theory.

Notwithstanding, the research provides noteworthy insights for the academic debates on norms and non-governmental actors as well as on the conditions that facilitate normative developments and non-governmental policy influence. First, the model of the internal life of norm that was developed for this research was demonstrated a useful heuristic tool to elucidate aspects of norm development that are not captured by the established constructivist models. As argued, the established models are ill-equipped for the comparative analysis of the internal characteristics of norms within a given issue area as well as the analysis of developments in these characteristics. The more nuanced analysis on the basis of the internal life model identified that norms within a given area can emerge in parallel and sometimes overlapping multilateral and national processes. The processes may influence each other but are not mutually dependent on each other. Likewise, the internal characteristics of norms within a given control area can develop independently of each other within and between different levels.

The internal life model also highlighted prominent pathways for norm development. Broadly speaking, the initial cascading of norms in previously uncontrolled issue areas was often facilitated by restricting the norms to basic principles with little specificity and/or binding character. The adoption of highly specific norms could sometimes be facilitated by restricting their binding character. Examples were the best practice guides



on small arms control that were adopted in several forums. Importantly though, the use of the model also highlighted the possible evolutionary character of internal norms characteristics and the eventual emergence of norms of high specificity and binding character. The maturing of norms after their initial adoption was not predetermined or inevitable but the result of continuing pressures and negotiations between states with different motivations and interest.

In addition, the analysis is of relevance to constructivist insights on the issue characteristics that may influence normative developments. Keck and Sikkink argue that norms which establish a short causal chain assigning responsibility for the bodily harm of vulnerable individuals are especially amenable to advocacy (Keck and Sikkink, 1998, p. 27). The issue of arms transfer criteria offers a good example. The issue attracted significant support from public advocacy actors. At the same time, global transfer criteria remain a contested issue at the UN. In relation to the EU and the UK, it was shown that especially controls on actors and activities abroad remain contested. Normative developments in these areas were hindered by the more indirect link between the responsibility of exporting states and to negative consequences of arms abroad.

Second, the findings respond to the debate on whether non-governmental actors matter in areas of high politics and, if so, under what conditions. The findings do not support globalists claims for a fundamental shift towards governance structures in which states increasingly share policy authority with non-governmental actors. States retain their principal primacy in the decision-making on national arms controls. But there is clear evidence that the investigated processes and policy outcomes cannot be adequately explained without acknowledging the role and influence of non-governmental actors. Specifically, the findings support the position of constructivists

who argue that non-governmental actors do not face ‘a particular handicap’ when working on security issues if compared to issues in areas of low politics such as human rights.

The findings also indicated several conditions that facilitated non-governmental advocacy influence. Key elements in this regard were the provision of credible and policy-relevant information and a mainstream approach that sought to limit negative effects of the arms trade without banning this trade altogether. This allowed non-governmental experts to gain continued insider access to policy debates that, in turn, contributed to their efforts to exert influence and pressure on governments. The effectiveness of moral leverage by especially public advocacy actors was greatly enhanced by broad transnational campaigns and networks. In the EU and UK, the effectiveness of non-governmental leverage could also benefit by the responsiveness of democratically elected governments in the Western world to moral arguments about their responsibilities in the arms trade.

Lastly, the research suggests several avenues for the further analysis. The findings could be developed by extending the scope of investigation to norms and normative processes that were excluded here for reasons of space. The analysis of the relevant processes in the EU could be strengthened by additional studies of national developments. This would allow for further insights into the degree to that the different levels of quality in national debates influence the policy impact of non-governmental actors. Of additional interests would be a comparison between dynamics in the EU and in sub-regions in for example sub-Saharan Africa. Importantly, the research would be usefully complemented with an investigation of the implementation of the adopted norms and the degree to that they changed and impacted on actual practices of states in their national controls.

Further research would also allow for determining the degree to that the findings of this research can be applied to other issues in the area of security studies. Of particular interest would be normative developments and non-governmental advocacy efforts since the early and mid 2000s in the context of a global ban of cluster munitions. A sub-category of conventional arms, cluster munitions are designed to drop a multitude of 'bomblets' in mid-air that, if not exploding upon hitting the ground, pose challenges similar to anti-personnel landmines. Research on developments in these respects would allow for a further comparison of dynamics and actors underpinning changes in the 'high' politics of conventional arms control. It would also allow for testing whether the model of the 'internal life' is of use for the analysis of normative developments in other arms control areas.

## **Annex: Multilateral instruments on arms control**

States adopted a range of multilateral instruments on conventional arms and on small arms control since the 1990s. This annex provides a review of prominent instruments that states adopted at the global level and at regional and sub-regional levels in Africa, the Americas, and Europe. The review also includes instruments that states adopted in the trans-regional Organisation for Security and Cooperation in Europe (OSCE) and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement (WA)).

### **A.1 Global control instruments**

The first global instrument on small arms control that states adopted is the legally binding United Nations *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* (UN Firearms Protocol) (UN General Assembly (UNGA), 2001a). The UN Firearms Protocol was adopted by the UN General Assembly in May 2001 as a complement to the 2001 *UN Convention against Transnational Organised Crime*. The protocol entered into force after the deposit of the fortieth instrument of ratification in July 2005 and had 52 signatories by late 2007. It stipulates and recommends measures that include the strengthening of national legislation on firearms; brokering controls; the marking, record-keeping, and tracing of firearms; the destruction of confiscated firearms; and the establishment of harmonised licensing systems. It further promotes information exchange on traders, sources and trafficking routes as well as the provision of technical, financial and material support for states requesting such assistance.

The second global instrument is the politically binding *UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in*

*All Its Aspects* (UN Programme of Action). States adopted the programme at an international conference in New York in July 2001 (UN, 2001). At the national level, the UN Programme of Action stipulates measures that include criteria that states are to respect in their transfer licensing decisions; the strengthening of legislation; the marking and tracing of small arms; brokering controls; stockpile management; and the identification and destruction of surplus small arms. At the regional level, the UN Programme encourages negotiations of instruments aimed at combating the illicit trade in small arms in all its aspects, as well as enhancing cross-border information among law enforcement agencies. At the global level, it encourages demobilisation and reintegration programmes in post-conflict situations, as well as the development of common understandings of small arms control issues.

The politically binding *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* (International Tracing Instrument) was adopted by the United Nations General Assembly in December 2005 (UNGA, 2005). The International Tracing Instrument encourages states to mark all legally produced small arms with a code containing a unique serial number and information that identifies the country of manufacturer and the manufacturer. In addition, states are encouraged to keep adequate records on small arms production and transfers and to cooperate in the tracing of illicit small arms that are recovered outside their country of production.

## **A.2 Control instruments in Africa**

States in the Organisation of African Unity (OAU) adopted the *Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons* (Bamako Declaration on SALW) in December 2000

(OAU, 2000). The politically binding Bamako Declaration recommends that states enhance law enforcement capacities to deal with the small arms problem; strengthen the national legislation on small arms control; destroy illicit small arms; and control arms brokers. At the regional level, the declaration recommends that states coordinate efforts to combat illicit small arms and harmonize national small arms legislation. At the international level, the declaration calls on arms supplier countries to limit the legal trade in small arms to governments and authorised traders and to fund efforts to combat illicit small arms by Organisation of African Unity member states.

States in central and eastern Africa adopted the *Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa* as a politically binding instrument in March 2000 (Nairobi Declaration, 2000). The Nairobi Declaration encourages member states to strengthen national mechanisms on small arms control, including on the control of civilian arms possession, and promote sub-regional cooperation among police, intelligence, and customs services. The declaration calls on states that are sources of small arms to regulate manufacturers, traders, and brokers and on the international community to provide financial, technical, and political support for the declaration's implementation.

The Nairobi Declaration was complemented with the legally binding *Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa* that states adopted in April 2004 (Nairobi Protocol, 2004). The protocol entered into force after the deposit of the instruments of ratification by two thirds of member states in May 2006. The Nairobi Protocol stipulates that states shall take measures to criminalise the illicit trafficking, manufacturing, and possession of small arms; control dealers and brokers; mark, keep

records on, and trace small arms; establish accountability of state-owned small arms stocks; destroy illicit small arms; and control civilian small arms possession.

In turn, the Nairobi Protocol was complemented with the *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons* in June 2005 (Nairobi Best Practice, 2005). The guidelines have a recommendatory character for member states of the Nairobi Declaration and Nairobi Protocol. The guidelines elaborate and detail control standards in the areas that are covered in the Nairobi Protocol. The guidelines also specify criteria that member states are to respect in their decisions on arms transfer applications.

States member to the Southern African Development Community (SADC) adopted the legally binding *Protocol on Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region* (SADC Firearms Protocol) in August 2001 (SADC, 2001a). The SADC Firearms Protocol entered into force after the deposit of the instruments of ratification by two thirds of the member states in November 2004. The protocol stipulates that states adopt controls on civilian firearms possession; control state-owned small arms stocks; mark and keep records on firearms; control brokers; encourage the voluntary surrender of illicitly held firearms; and responsibly dispose of firearms. The protocol also encourages mutual legal assistance and the establishment of appropriate mechanisms for cooperation among law enforcement agencies between member states.

States member to the Economic Community of West African States (ECOWAS) adopted the *ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials* (ECOWAS Convention) as a legally binding instrument in June 2006 (ECOWAS, 2006). The convention stipulates that member states may only import or transfer small arms if so authorised by the executive

secretariat of ECOWAS. The authorisation is to be made on the basis of range of criteria, including that the small arms are not destined to be used for violations of international humanitarian law. The convention stipulates that states control the manufacture, brokering, and civilian possession of small arms and establish national and sub-regional databases on small arms. The convention promotes the marking of small arms, measures to strengthen stockpile management and security, as well as collection, destruction, and public education programmes.

### **A.3 Control instruments in the Americas**

States member to the Organisation of American States (OAS) adopted the *Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* (OAS Firearms Convention) in November 1997 (OAS, 1997). The legally binding instrument entered into force in July 1998. The OAS Convention promotes legislative measures to combat illicit manufacturing of trafficking in firearms; the marking and record-keeping on firearms; the destruction of recovered illicit firearms; the establishment of effective firearms export and transit systems; and greater regional cooperation, including in the area of mutual legal assistance.

The OAS Convention was complemented with the *Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition* in June 1998 (OAS, 1998), and the *Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition* in November 2003 (OAS, 2003). The model regulations (hereafter collectively referred to as ‘OAS Guidelines’) build on the OAS Convention. They have a recommendatory character and



promote detailed control measures in the issue-areas that are covered in the respective guidelines.

#### **A.4 Control instruments in the European Union**

States member to the European Union adopted the EU *Joint Action on Small Arms* in December 1998. The legally binding instrument commits EU states to promoting responsible arms export policies and national weapons management practices at multilateral levels. It also promotes technical and financial support to countries requesting assistance. The Joint Action was repealed and replaced to extend its scope of application to ammunition for small arms and light weapons (Council of the EU, 2002).

EU states adopted the *EU Code of Conduct on Arms Exports* (EU Code of Conduct) as a politically binding instrument in June 1998 (Council of the EU, 1998). The code stipulates criteria that member states should respect in their decisions on arm export applications and operative provisions that include an annual reporting mechanism. EU member states complemented the EU Code with a range of politically binding understandings and recommendatory guidelines that are published in annual reports and user guides.

The EU Code and its operative provisions were transformed into legally binding obligations of states when they adopted the *Council Common Position defining common rules governing the control of exports of military technology and equipment* in December 2008 (Council of the EU, 2008). The common position also introduced understandings that states had previously agreed on in their discussions on the implementation of the EU Code.

The Council of the EU adopted the *Council Common Position on the Control of Arms Brokering* (EU Common Position on Brokering) as a legally binding instrument

in June 2003 (Council of the EU, 2003). The common position stipulates that member states license arms brokering activities on the basis of the criteria of the EU Code of Conduct on Arms Exports. The common position recommends additional control measures that include the registration of arms brokers and the control of brokering activities by national residents of EU member states that are carried out abroad.

### **A.5 Trans-regional control instruments**

States in the Organisation for Security and Cooperation in Europe (OSCE) adopted the *OSCE Document on Small Arms and Light Weapons* (OSCE Document on SALW) as a politically binding instrument in November 2000 (OSCE, 2000). The document stipulates measures to enhance national controls of small arms manufacturing; brokering controls; marking and record keeping on small arms; common export criteria; standards for the management of state-owned stocks; and measures related to small arms surplus reduction and destruction.

The OSCE Document was complemented with the recommendatory *OSCE Handbook on Best Practices of Small Arms and Light Weapons* (OSCE Best Practices) that were adopted in December 2003 (OSCE, 2003). The best practices list essential and optional control measures in the issue areas of small arms manufacture; marking, record-keeping, and tracing; stockpile management; brokering activities; exports; surplus identification; small arms in the context of disarmament, demobilisation, and reintegration programmes; and small arms destruction.

States in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement) adopted a range of understandings and recommendatory best practices on conventional arms controls in the last decade. Relevant documents (hereafter collectively referred to as Wassenaar Best

Practices) include the updated *Best Practice Guidelines for Exports of Small Arms and Light Weapons* of 2007 (Wassenaar Arrangement, 2007a) and the *Elements for Effective Legislation on Arms Brokerage* of 2003 (Wassenaar Arrangement, 2003). The Wassenaar Best Practices stipulate detailed standards that states are encouraged to respect in the issue areas that are covered by the instruments.

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